

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6114

In The

United States Court of Appeals

For The Second Circuit

FRIENDSHIP DAIRIES, INC., POLLIO DAIRY
PRODUCTS CORP., CROWLEY FOODS, INC.,
QUEENSBORO FARM PRODUCTS INC., SARATOGA
DAIRY, INC., DELTOWN FOODS, INC., ELMHURST
MILK AND CREAM CO., INC., QUEENS FARMS, INC.,
and CUBA CHEESE AND TRADING CO., INC.,

Plaintiffs-Appellants,

-against-

EARL BUTZ, Secretary of the Department of Agriculture of the
United States,

Defendant-Appellee,

-and-

PENNMARVA DAIRYMEN'S COOPERATIVE
FEDERATION, INC.,

Intervenor-Appellee.

*From an Order and Judgment of the United States District
Court for the Eastern District of New York in 75c 1517.*

JOINT APPENDIX

Volume IV, pp. 871a - 1170a

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nificant effect on the quality of the human environment resulting from approval of its application), are governed by Special Rule 1100.247¹ of the Commission's general rules of practice (46 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER.

¹ Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

TER of a notice that the proceeding has been assigned for oral hearing.

No. MC 2135 (Sub-No. 11), filed November 29, 1973. Applicant: D. J. McNICHOL CO., a Corporation, 2519 Morris Street, Philadelphia, Pa. 19145. Applicant's representative: Harold P. Boss, 1100 Seventeenth Street NW., Washington, D.C. 20036. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Such foods, commodities, and equipment as are used in connection with the operation of cafeterias* (a) from Philadelphia, Pa., to points in Maryland and the District of Columbia; (b) between Philadelphia, Pa., on the one hand, and, on the other, points in New Castle County, Del., points in that part of New York on and south of U.S. Highway 6 and those in New Jersey on and north of a line beginning at Trenton, N.J., and extending along New Jersey Highway 33 to intersection New Jersey Secondary Highway 537, thence along New Jersey Secondary Highway 537 to Freehold, N.J., thence along New Jersey Secondary Highway 537 through Colts Neck and Tinton, N.J., to Eatontown, N.J., thence along New Jersey Highway 71 to intersection unnumbered highway near Oceanport, N.J., and thence along unnumbered highway through Long Branch, N.J., to the Atlantic Ocean; and (c) from Philadelphia, Pa., to points in Connecticut, Massachusetts, Rhode Island, Virginia (except those in Washington, D.C., Commercial Zone), and those points in Delaware, New Jersey, and New York not specified in 1(b) above; and (2) on return, *shipments* which have been accepted by a consignee which are subsequently to be returned to ARA Services, Inc., from the destination territory described in 1(c) above and points in Maryland and the District of Columbia, to Philadelphia, Pa., under a continuing contract or contracts with ARA Services, Inc.

NOTE.—Common control and dual operations may be involved.

Applicant states that it is presently performing the operations requested in 1 (a) and (b) above, with a restriction on the commodities described therein in 1(a) "as are used in connection with the operation of industrial plant and institutional cafeterias," and in 1(b) "as are used in industrial plant cafeterias." By the instant application, applicant seeks removal of said restriction and extension of present operating authority as specified herein. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 2202 (Sub-No. 457), filed January 11, 1974. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, Ohio 44309. Applicant's representative: William Slabaugh (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities* (except those

of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the Holiday Industrial Park, De Soto County, Miss., as an off-route point in connection with applicant's regular-route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Washington, D.C.

No. MC 2860 (Sub-No. 140), filed December 6, 1973. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, N.J. 08360. Applicant's representative: Jacob P. Ehrig, 1126 16th Street NW., Suite 300, Washington, D.C. 20036. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Ores, NOIBN*, between Winslow, N.J., on the one hand, and, on the other, points in Michigan, Illinois, Indiana, and Ohio.

NOTE.—Applicant states that the requested authority can be tacked at Winslow, N.J., to provide service between the Middle Atlantic and Southern New England states. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 5623 (Sub-No. 23), filed January 11, 1974. Applicant: ARROW TRUCKING CO., a Corporation, P.O. Box 6027, Tulsa, Okla. 74106. Applicant's representative: Joseph G. Dail, Jr., 1111 E. Street NW., Suite 501, Washington, D.C. 20004. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Refractories*, (1) from the plantsite of North American Refractories Co., located at or near Farber, Mo., to points in Alabama, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; and (2) from the plantsites of North American Refractories Co. located in Berks, Huntingdon, and Clearfield Counties, Pa., and Jackson, Ohio, to points in Arizona, Arkansas, Colorado, California, Florida, Georgia, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Cleveland, Ohio.

No. MC 10794 (Sub-No. 4), filed January 8, 1974. Applicant: PERROW MOTOR FREIGHT LINES, INCORPORATED, P.O. Box 811, Charleston, W. Va. 25323. Applicant's representative: John A. Pillar, 2310 Grant Bldg., Pittsburgh, Pa. 15219. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Charleston, W. Va., on the one hand, and, on the other, points in West Virginia, and those in Pike and

Greenup Counties, Ky.; Washington, Jefferson, Belmont, Monroe, Athens, Meigs, Gallia, and Lawrence Counties, Ohio, and Tazewell County, Va., restricted to traffic having a prior or subsequent movement in interstate commerce.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charleston, W. Va.

No. MC 11722 (Sub-No. 38), filed January 2, 1974. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, Wash. 98953. Applicant's representative: Douglas A. Wilson, 303 East D Street, Yakima, Wash. 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty containers, and parts thereof*; (1) from Richmond, Calif., to points in Oregon, Washington and Idaho; and (2) from Tacoma, Wash., to points in Oregon, Idaho, and California.

NOTE.—Applicant holds contract carrier authority in MC 124658 Subs 2 and 4, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Seattle, Wash.

No. MC 29120 (Sub-No. 172), filed January 11, 1974. Applicant: ALL-AMERICAN, INC., 900 West Delaware, P.O. Box 769, Sioux Falls, S. Dak. 57101. Applicant's representative: Michael J. Ogborn (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, skins, hides, and chromes, and those requiring special equipment), between Denver, Colo., and St. Louis, Mo.; From Denver over Interstate Highway 80 to junction Interstate Highway 29, thence over Interstate Highway 29 to junction Interstate Highway 70, thence over Interstate Highway 70 to St. Louis, serving no intermediate points, as an alternate route for operating convenience only in connection with carrier's regular route operations.

NOTE.—Common control was approved in MC-F-11285. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or St. Louis, Mo.

No. MC 29934 (Sub-No. 16), filed January 11, 1974. Applicant: LE BIONDO BROTHERS MOTOR EXPRESS, INC., RD No. 6, Bridgeton-Vineland Pike, west of Morton Ave., P.O. Box 160, Bridgeton, N.J. 08302. Applicant's representative: Martin Werner, 2 West 45th Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insecticides and fungicides* (except in bulk), from Malaga, N.J., to Middletown, and Sodus, N.Y., restricted to traffic originating at and destined to the named destination points.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 30844 (Sub-No. 493), filed January 11, 1974. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, P.O. Box 5000, Waterloo, Iowa 50702. Applicant's representative: Larry Strickler (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (1) from the plantsite and warehouse facilities of Wilson & Co., Inc., at Omaha, Nebr., to points in Connecticut, Indiana, Massachusetts, Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) from the plantsite and warehouse facilities at Cherokee, Iowa, to points in Virginia, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla., or Washington, D.C.

No. MC 30844 (Sub-No. 494), filed January 7, 1974. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, P.O. Box 5000, Waterloo, Iowa 50702. Applicant's representative: Paul Rhodes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the plant site and warehouse facilities of Western Potato Service, Inc., at or near Grand Forks, N. Dak., to points in Connecticut, Delaware, the District of Columbia, Indiana, Kentucky, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Washington, D.C.

No. MC 31389 (Sub-No. 177), filed January 10, 1974. Applicant: McLEAN TRUCKING COMPANY, a Corporation, 617 Waughtown Street, Winston-Salem, N.C. 27107. Applicant's representative: David F. Eshelman, P.O. Box 213, Winston-Salem, N.C. 27102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving that part of De Sota County,

Miss., on and bounded by a line beginning at the Tennessee-Mississippi State Line and extending along Germantown Road to junction Goodman Road, thence along Goodman Road to junction Center Hill Road, thence along Center Hill Road to the Tennessee-Mississippi State Line and thence along the Tennessee-Mississippi State Line to the point of beginning, as an off-route point in connection with the carrier authorized regular route operations from and to Memphis, Tenn.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Memphis, Tenn.

No. MC 33641 (Sub-No. 111), filed January 7, 1974. Applicant: IML FREIGHT, INC., 2175 South 3270 West, Salt Lake City, Utah 84110. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, between the plant site of Pepperidge Farms near Richmond, Utah and Salisbury, Md.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 33641 (Sub-No. 112), filed January 9, 1974. Applicant: IML FREIGHT, INC., 2175 South 3270 West, Salt Lake City, Utah 84110. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the site of the Jim Bridger Power Project, at or near Rock Springs, Wyo., as an off-route point in connection with applicant's regular route operations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Cheyenne, Wyo., or Salt Lake City, Utah.

No. MC 33970 (Sub-No. 14), filed January 9, 1974. Applicant: GEORGE HILDEBRANDT, INC., R.F.D. No. 2, Hudson, N.Y. 12534. Applicant's representative: John J. Brady, Jr., 75 State Street, Albany, N.Y. 12207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime, lime products and by-products, limestone, limestone products and by-products, sand, asphalt patching mix, in packages, lime mixed with sand or cement, and lime mixed with sand and cement*, from Lee, Mass., to points in Ohio, Virginia, West Virginia, Maryland, Delaware, District of Columbia, and Pennsylvania (except the counties of Susquehanna, Wyoming, Wayne, Pike, Lackawanna, Luzerne, and Bradford).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing

authority. If a hearing is deemed necessary, applicant requests it be held at Albany, N.Y.

No. MC 35045 (Sub-No. 15), filed January 8, 1974. Applicant: HORNE HEAVY HAULING, INC., 1124 De Kalb Avenue, NE., Atlanta, Ga. 30307. Applicant's representative: Monty Schumacher, Suite 310, 2045 Peachtree Road NE., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery and equipment*, from the plant site of the Cord Co., a division of Tufco International, Inc., Chattanooga, Tenn., to points in the United States (except Alaska and Hawaii) and return of damaged or refused shipments.

NOTE.—Dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 52460 (Sub-No. 134), filed December 17, 1973. Applicant: ELLEX TRANSPORTATION, INC., P.O. Box 9637, Tulsa, Okla. 74107. Applicant's representative: Steve B. McCommas, 1420 West 35th Street, Tulsa, Okla. 74107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising material*, from Memphis, Tenn., to points in Kansas and Missouri; and (2) *returned empty malt beverage containers*, from points in Kansas and Missouri, to Memphis, Tenn.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Oklahoma City or Tulsa, Okla.

No. MC 52460 (Sub-No. 135), filed January 10, 1974. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, P.O. Box 9515, Tulsa, Okla. 74107. Applicant's representative: Steve B. McCommas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the terminal of Mapco, Inc., near Clay Center, Kans., to points in Nebraska, Missouri, and Iowa.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Omaha, Nebr.

No. MC 52704 (Sub-No. 113), filed January 8, 1974. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, LaFayette, Ala. 36862. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree St. NW., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass containers, corrugated cartons and fillers, and those materials and supplies used in the manufacture of glass containers* (except in bulk), between the plantsite of Midland Glass Company, Inc., at or near Warner Robins, Ga., on the one

hand, and, on the other, points in Florida.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 59135 (Sub-No. 28), filed January 11, 1974. Applicant: RED STAR EXPRESS LINES OF AUBURN, INCORPORATED, doing business as RED STAR EXPRESS LINES, 24-50 Wright Avenue, Auburn, N.Y. 13021. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk, household goods as defined by the Commission, Classes A and B explosives, and those requiring special equipment), serving Williamson, N.Y., as an off-route point in connection with carrier's regular route operations.

NOTE.—Common control was approved in MC F-9570 and MC F-10540. If a hearing is deemed necessary, applicant requests it be held at Syracuse, N.Y., or Washington, D.C.

No. MC 59856 (Sub-No. 59), filed January 11, 1974. Applicant: SALT CREEK FREIGHTWAYS, a Corporation, 3333 West Yellowstone, Casper, Wyo. 82601. Applicant's representative: John R. Davidson, Room 805, Midland Bank Building, Billings, Mont. 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment because of size or weight), (1) Between Rapid City, S. Dak., and Spearfish, S. Dak.: From Rapid City over Interstate Highway 90 and U.S. Highway 14 to Spearfish and return over the same routes, serving no intermediate points except serving Sturgis, S. Dak., for the pick-up of lumber only; and (2) Between Newcastle, Wyo., and Rapid City, S. Dak.: From Rapid City, S. Dak., over U.S. Highway 16 to Newcastle and return over the same route, serving no intermediate points, (1) and (2) restricted against traffic originating at or destined to South Dakota points which moves from, to, or through Denver, Colo.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Rapid City, S. Dak.

No. MC 69116 (Sub-No. 164), filed January 9, 1974. Applicant: SPECTOR FREIGHT SYSTEM, INC., 205 West Wacker Drive, Chicago, Ill. 60606. Applicant's representative: Edward G. Baze-lon, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Iron and steel products, and metal and metal alloy products*, serving New Castle, Ind., as an off-route point in connection with carrier's otherwise authorized regular-route operations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 82492 (Sub-No. 100), filed December 19, 1973. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., P.O. Box 2853, 2109 Olmstead Road, Kalamazoo, Mich. 49003. Applicant's representative: William C. Harris (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Versailles, Ohio, to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, restricted to traffic originating at the named origin and destined to the named destination points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Chicago, Ill.

No. MC 87689 (Sub-No. 11) (Correction), filed December 7, 1973, published in the FEDERAL REGISTER issue of January 31, 1974, and republished as corrected this issue. Applicant: INTER-CITY TRUCK LINES LIMITED, P.O. Box 900, Station U, Toronto, Ontario, Canada M8Z 5R3. Applicant's representative: Rex Eames, 900 Guardian Building, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Port Huron, Mich., and the ports of entry on the International Boundary line of the United States and Canada at Port Huron, Mich.

NOTE.—The purpose of this republication is to correct the applicant's name, which was previously published in error. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 95540 (Sub-No. 894), filed January 14, 1974. Applicant: WATKINS MOTOR LINES, INC., 1940 Monroe Drive, P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Jerome F. Marks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, and nonedible foods* (except commodities in bulk), from Logansport, Ind., to points in Alabama, Georgia, Louisiana, Florida, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 100300 (Sub-No. 10), filed January 7, 1974. Applicant: H. B. NELSON AND SONS, INC., P.O. Box 241, Alexandria, Minn. 56308. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis,

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Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials*, from Olympia, Wash., to points in Minnesota; and (2) *empty containers, pallets, and rejected or returned shipments*, from points in Minnesota to Olympia, Wash.

NOTE.—Applicant holds contract carrier authority in MC 134469. Therefore, dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 100449 (Sub-No. 42), filed January 9, 1974. Applicant: MALLINGER TRUCK LINE, INC., R.F.D. 4, Fort Dodge, Iowa 50501. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plant site of Royal Packing Company located at or near East St. Louis, Ill., to points in Iowa, Minnesota, Nebraska, North Dakota, South Dakota, Texas, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 103051 (Sub-No. 299), filed January 14, 1974. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, in tank vehicles, from points in Mecklenburg County, N.C., to points in Tennessee.

NOTE.—Common control and dual operations may be involved.

Applicant states that the requested authority can be tacked with its existing authority as follows: In the lead certificate (a) on liquid petroleum products at Tyner, Tenn., to serve points in Alabama within 125 miles of the terminals of the Colonial Pipe Line Company located in Georgia, and (b) on petroleum products, at Chattanooga, Tenn., to serve points in Alabama within 125 miles of Chattanooga, Tenn., in Sub-No. 184, on fertilizer solutions at points in Hamilton County, Tenn., to serve points in Kentucky, in Sub-No. 195, (a) on petroleum products at Chattanooga and Tyner, Tenn., to serve Carrollton, Ga., and points in Georgia on and north of a line beginning at the Georgia-South Carolina State Boundary line and extending along U.S. Highway 29 to Atlanta, Ga., and thence along U.S. Highway 78 to the Alabama-Georgia State Boundary line, (b) on gas-

oline at Knoxville, Tenn., to serve Greenville, S.C., and (c) on gasoline, kerosene, and lubricating oils (except residual fuel oils) at points in Knox County, Tenn., to serve points in Fannin County, Ga., in Sub-No. 196 on anhydrous ammonia and fertilizer solutions at Tyner, Tenn., to serve points in Alabama; in Sub-No. 217 on chemicals at points in Robertson County, Tenn., to serve points in Alabama, Arkansas, Georgia, Kentucky, Indiana, Michigan, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and Tennessee and specified parts of Illinois and Missouri in Sub-No. 224 on petroleum and petroleum products at Nashville, Tenn., to serve Fort Campbell, Ky.; and in Sub-No. 230 at points in La Vergne, Tenn., commercial zone as defined by the Commission except those points located in the Metropolitan Government of Nashville and Davidson Counties, Tenn., to serve points in Alabama, Arkansas, Georgia, Kentucky, Illinois (except that part of Illinois on and north of U.S. Highway 34), Indiana, Michigan, Mississippi, Missouri (except that part of Missouri on and north of U.S. Highway 24), North Carolina, Ohio, South Carolina, and Virginia. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Atlanta, Ga.

No. MC 103051 (Sub-No. 298), filed January 14, 1974. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic resin*, in bulk, in tank vehicles, from Nashville, Tenn., to points in Tennessee.

NOTE.—Dual operations may be involved. Common control may also be involved. Applicant states that the existing authority can be tacked (1) in MC-103051 (Sub-No. 217), at points in Robertson County, Tenn., to serve points in Alabama, Arkansas, Georgia, Kentucky, Indiana, Michigan, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and Tennessee (except Kingsport and Elizabethton), and specified points in Illinois and Missouri; and (2) in Sub-No. 230, at La Vergne, Tenn., Commercial Zone, to serve points in Alabama, Arkansas, Georgia, Kentucky, Illinois, Indiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, South Carolina, and Virginia. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Atlanta, Ga.

No. MC 103498 (Sub-No. 38), filed January 7, 1974. Applicant: W. D. SMITH TRUCK LINE, INC., P.O. Drawer C, DeQueen, Ark. 71832. Applicant's representative: Donald T. Jack, Jr., 1550 Tower Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Particleboard*, from points in Monroe County, Ala., to points in Louisiana, Arkansas, Texas, Mississippi, Kansas, Missouri, Tennessee, and New Mexico; and (2) *lumber and lumber products*, from points in Scott County, Miss., to points in Louisiana, Arkansas, Texas, Alabama, Kansas, Missouri, Tennessee, and New Mexico.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Shreveport, La.

No. MC 103498 (Sub-No. 39), filed December 14, 1973. Applicant: W. D. SMITH TRUCK LINE, INC., P.O. Drawer C, DeQueen, Ark. 71832. Applicant's representative: Donald T. Jack, Jr., 1550 Tower Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and building materials*, from the plant site of Bird and Son, Inc., Shreveport, La., to points in Arkansas, Oklahoma, Kansas, and Missouri.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark., or Shreveport, La.

No. MC 106497 (Sub-No. 91), filed January 11, 1974. Applicant: PARKHILL TRUCK COMPANY, a Corporation, P.O. Box 912 (Bus. Rte I-44 East), Joplin, Mo. 64801. Applicant's representative: A. N. Jacobs, P.O. Box 113, Joplin, Mo. 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Off-highway vehicles; and parts, attachments, and accessories for or of off-highway vehicles*, (1) between Tulsa, Okla.; Lufkin, Conroe, and Houston, Tex.; and Lark, Utah, on the one hand, and, on the other, points in the United States including Alaska, but excluding Hawaii, restricted to shipments originating at or destined to the facilities of Unit Rig and Equipment Company, at Tulsa, Okla.; Houston, Tex.; and Lark, Utah; and the facilities of Kimco, Inc., at Houston, Lufkin, and Conroe, Tex.; and (2) from Niagara Falls, N.Y., to points in the United States (including Alaska, but excluding Hawaii), restricted to shipments originating from the facilities of Unit Rig and Equipment Company (Canada), Ltd., Niagara Falls, Ontario, Canada, and further restricted to foreign commerce.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 106444 (Sub-No. 171), filed December 17, 1973. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW, P.O. Box 916, Atlanta, Ga. 30301. Applicant's representative: W. Randall Tye, 1508 Candler Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Commodities* which, because of size, weight, or shape, require the use of special equipment or special handling; and (b) *attachments, parts, machinery, materials, and supplies*, related to the commodities named in Part (1) (a) and moving in connection therewith; (2) *self-propelled articles*, each weighing 15,000 pounds or more, and related machinery, tools, parts, and supplies, moving in connection there-

with; and (3) *commodities* which because of size, weight or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) *commodities* which because of size, weight, or shape require the use of special equipment or special handling, or (b) *self-propelled articles* each weighing 15,000 pounds or more, between points in Wisconsin, on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority in (1) Sub-No. 30 on *commodities* at Georgia, to provide service between points in Texas and Wisconsin; (2) Sub-No. 41 on *knitting machinery*, at Illinois to provide service between Wisconsin, California, Michigan, Minnesota, and Texas; (3) Sub-No. 47 on *self-propelled articles*, at Georgia to provide service between points in Wisconsin and Texas; (4) Sub-No. 90, on iron and steel articles at Alabama to provide a through service from Wisconsin to points in Texas; (5) Sub-No. 113 on aluminum ingots, pigs, billets, blooms, and plates at Scottsboro, Ala., to provide a through service from points in Wisconsin to points in California, Oregon, Texas, and Washington; (6) Sub-No. 136 on sand and gravel spreaders, fertilizer spreaders, feed bodies, and slurry spreaders, at Cedar Rapids, Iowa, to provide a through service from points in Wisconsin to all points in the United States (except Alaska, Hawaii, South Dakota, Montana, Wyoming, Colorado, California, Utah, Oregon, Washington, Idaho, and Nevada); and (7) MC-F-11818 currently pending at Ohio and Mississippi to provide service between points in Wisconsin and Texas. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 106644 (Sub-No. 172), filed January 10, 1974. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., P.O. Box 916, Atlanta, Ga. 30301. Applicant's representative: W. Randall Tye, 1500 Candler Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum billets, blooms, ingots, pigs, and slabs, and non-ferrous metals* for recycling purposes, from the plant-site of Culp Smelting and Refining Co., at or near Steele, Ala., to points in Arkansas, Florida, Georgia, Illinois, Indiana, Mississippi, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Virginia, Tennessee, Texas, West Virginia, and Wisconsin.

NOTE.—Applicant states that the requested authority can be tacked transporting aluminum commodities at North Carolina, in Sub-No. 41, to serve points in Maryland, Pennsylvania, New Jersey, New York, Massachusetts, and Rhode Island. If a hearing is deemed necessary, the applicant requests it be held at either Birmingham, Ala., or Atlanta, Ga.

No. MC 106647 (Sub-No. 173), filed January 11, 1974. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., P.O. Box 916, Atlanta, Ga. 30301. Applicant's representative: W. Randall Tye, 1500 Candler Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Commodities* which, because of size, weight or shape, require the use of special equipment or special handling; and (b) *attachments, parts, machinery, materials, and supplies* related to the commodities named in part (1) (a) and moving in connection therewith; (2) *self-propelled articles*, each weighing 15,000 pounds or more, and related machinery, tools, parts and supplies moving in connection therewith; and (3) *commodities* which, because of size, weight, or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) *commodities* which, because of size, weight, or shape require the use of special equipment or special handling, or (b) *self-propelled articles* each weighing 15,000 pounds or more, between Escanaba, Mich., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 107107 (Sub-No. 432), filed January 7, 1974. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 NW. 42d Ave. (LeJeune Rd.), Opa Locka, Fla. 33054. Applicant's representative: Ford W. Sewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy and confectionery and related products* (except in bulk), and (2) *advertising matter, premium and display materials* when shipped in the same vehicle with commodities described in (1), in vehicles equipped with mechanical refrigeration, from the plant site and warehouse facilities of M & M Mars, Division of Mars, Inc., located at or near Albany, Atlanta, Decatur, and Doraville, Ga., to points in Arkansas, Colorado, Louisiana, Texas, Missouri, and Minnesota, restricted to the transportation of traffic originating at the plant site and warehouse facilities of M & M Mars, Division of Mars, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Miami or Orlando, Fla.

No. MC 107839 (Sub-No. 155), filed January 14, 1974. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, Denver, Colo. 80216. Applicant's repre-

sentative: Edward T. Lyons, Jr., Suite 1600 Lincoln Center, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Amarillo, Tex., to points in Alabama, Florida, North Carolina, South Carolina, Georgia, Mississippi, Louisiana, and Tennessee, restricted to the transportation of traffic originating at the plant site and storage facilities of John Morrell & Co.

NOTE.—If a hearing is deemed necessary, applicant requests a consolidated hearing.

No. MC 108411 (Sub-No. 6), filed January 14, 1974. Applicant: STEARLY'S MOTOR FREIGHT, INC., Box B, Collegeville, Pa. 19426. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, Pa. 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Overhead traveling cranes, gantry cranes, and crane parts*, from the plant site or facilities of the American Crane and Equipment Corp., at or near Douglassville, Pa., to points east of North Dakota, South Dakota, Nebraska, Colorado, and New Mexico; and (2) *materials, supplies, or equipment* used incidental to or in connection with the sale, manufacture or distribution of the above-named commodities from the above-named destination territory, to the above-named origin point, restricted to traffic originating at and destined to the plant site or facilities of the American Crane and Equipment Corp., at or near Douglassville, Pa.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa.

No. MC 108676 (Sub-No. 59), filed January 11, 1974. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue NE., Knoxville, Tenn. 37917. Applicant's representative: Carl U. Hurst, P.O. Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refuse containers and cargo containers*, (2) *refuse container systems and cargo container systems*, and (3) *parts, attachments, and accessories* for the commodities described in (1) and (2) above, from Cleburne, Tex., and Danville, Pa., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Knoxville or Nashville, Tenn.

No. MC 110525 (Sub-No. 1083), filed January 10, 1974. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as

a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Crushed blast furnace slag*, in bulk, in tank vehicles, from Morrisville, Pa., located in Falls Township (Bucks County), Pa., to ports of entry on the International Boundary line between the United States and Canada, located in Maine, and (2) *granulated slag (Melite 40)*, in bulk, in tank vehicles, from Bow, N.H., to Millville, N.J.

NOTE.—Applicant states that the requested authority can be tacked at Morrisville, Pa., with the combined authority in Sub-No. 1043, Item No. 822, Item No. 824 and Sub-No. 608, Item No. 366, to provide a through service from points in Delaware, New Jersey, Maryland, and the District of Columbia to the ports of entry on the International Boundary line between the United States and Canada, located in Maine. If a hearing is deemed necessary, the applicant requests it be held at either Trenton, N.J., or Philadelphia, Pa.

No. MC 110525 (Sub-No. 1084), filed January 11, 1974. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from the plant sites and storage facilities of the Dow Chemical Company located at or near Midland, Mich.; Hanging Rock, Ohio; Pevely, Mo.; and Channahon Township (Will County), Ill., to all points in the United States on and east of U.S. Highway 85, restricted to the transportation of shipments originating at the Dow Chemical plant sites and storage facilities named above.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority in Sub-No. 828, paragraph 596 at points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont to serve those Ports of Entry between the United States and Canada located at or near Trout River, Alexandria Bay, Roosevelttown, Ogdensburg, and Champlain, N.Y.; Highgate Springs, Derby Line and Norton, Vt., restricted to the transportation of traffic destined to points in the province of Quebec, Canada. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 110563 (Sub-No. 125), filed December 26, 1973. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Ohio Building, Sidney, Ohio 45365. Applicant's representative: Mr. John L. Maurer (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Omaha, Nebr., Sioux City, Iowa, and Fargo, N. Dak., to points in Illinois, Indiana, Michigan, Ohio, and Wisconsin, restricted to traffic originat-

ing at the plantsites and warehouse facilities utilized by Flavorland Industries, Inc., at or near the above origin points.

NOTE.—Applicant states that the requested authority can be tacked (1) in the lead docket at Cleveland, Ohio, to serve points in Pennsylvania, New Jersey, and New York, (2) in Sub-No. 19, at Cleveland, Ohio, to serve Baltimore, Md., Washington, D.C., and points in Massachusetts and Rhode Island, and (3) in Sub-No. 38, at Chicago, Ill., to serve points in Massachusetts, Pennsylvania, New Jersey, New York, and Rhode Island, and Washington, D.C., and Baltimore, Md. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 111740 (Sub-No. 28) (Clarification), filed October 25, 1973, published in the FEDERAL REGISTER issue of January 4, 1974, and republished as clarified this issue. Applicant: OIL TRANSPORT COMPANY, a Corporation, East Highway 80, P.O. Drawer 2679, Abilene, Tex. 79604. Applicant's representative: Jerry Prestridge, P.O. Box 1148, Austin, Tex. 78767. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, between points in Texas on and west of a line beginning at the junction of U.S. Highway 75 and the Texas-Oklahoma State Boundary line and extending along U.S. Highway 75 to intersection Interstate Highway 20 at Dallas, Tex., thence along Interstate Highway 20 to intersection Interstate Highway 35E at Dallas, Tex., thence along Interstate Highway 35E to intersection Interstate Highway 35, thence along Interstate Highway 35 to the International Boundary line between the United States and the Republic of Mexico at Laredo, Tex., New Mexico, and Oklahoma.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to indicate the tacking information. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at both Dallas, Tex., and Albuquerque, N. Mex.

No. MC 112223 (Sub-No. 93), filed January 8, 1974. Applicant: QUICKIE TRANSPORT CO., a Corporation, 501 11th Avenue South, Minneapolis, Minn. 55415. Applicant's representative: Earl Hacking, 503 11th Avenue South, Minneapolis, Minn. 55415. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Petroleum and petroleum products* (except anhydrous ammonia and liquefied petroleum gas, LPG) in bulk, in tank vehicles, from points in Hennepin, Ramsey, Dakota, Washington, and Scott Counties, Minn., to points in Iowa, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan, and (2) *petroleum and petroleum products*, in bulk, in tank vehicles, from ports of entry on the International Boundary between the United States and Canada, located in Minnesota, to points in Minnesota.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing

authority. If a hearing is deemed necessary, the applicant requests it be held at either Minneapolis or St. Paul, Minn.

No. MC 112713 (Sub-No. 160), filed December 26, 1973. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, Kans. 66207. Applicant's representative: John M. Records (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Waukesha, Wis., as an off-route point in connection with carrier's otherwise authorized regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis., or Chicago, Ill.

No. MC 112801 (Sub-No. 150), filed January 11, 1974. Applicant: TRANSPORT SERVICE CO., a Corporation, 2 Salt Creek Lane, Hinsdale, Ill. 60521. Applicant's representative: Gene Smith (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from the plantsite and storage facilities of Dow Chemical Company, located at Pevely, Mo., and Channahon Township (Will County), Ill., to points on and east of U.S. Highway 85, restricted to shipments originating at said plantsites and storage facilities.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113267 (Sub-No. 310) (Clarification), filed November 12, 1973, published in the FEDERAL REGISTER issue of December 20, 1973, and republished as clarified this issue. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3385 Airways Blvd., Suite 115, Memphis, Tenn. 38116. Applicant's representative: Lawrence A. Fischer (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Canned and preserved food products*, (1) from Wilson, N.C., to points in Indiana, Kentucky, Louisiana, Michigan, Ohio, and Tennessee; and (2) from the plant site of Bruce Foods Corporation at or near New Iberia, La., to points in Illinois, Indiana, Ohio, and North Carolina, restricted to traffic originating at the named origins and destined to the named destination states.

NOTE.—The purpose of this republication is to clarify the origin points in (2) above to the plant site at or near New Iberia, La. Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or New Orleans, La.

No. MC 113855 (Sub-No. 289), filed January 10, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, Minn. 55901. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) Tractors (except those with vehicle beds, bed frames, and fifth wheels); (2) equipment designed for use in conjunction with tractors; (3) agricultural, industrial, and construction machinery and equipment; (4) trailers, designed for the transportation of the above-described commodities (except those trailers designed to be drawn by passenger automobiles); (5) attachments for the above-described commodities; (6) internal combustion engines; (7) parts of the above-described commodities when moving in mixed loads with such commodities, and (8) materials, equipment, and supplies (except commodities in bulk) used in the manufacture and distribution of the commodities described in (1) through (7) above, between Lexington, Nebr., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the ports of entry on the International Boundary line between the United States and Canada located in North Dakota, and Minnesota, restricted to the transportation of traffic (a) originating at Lexington, Nebr., and destined to points in the above-named States or (b) originating at points in the above-named States and destined to Lexington, Nebr., except that the restrictions in (a) and (b) shall not apply to traffic moving in foreign commerce.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114004 (Sub-No. 138), filed December 14, 1973. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Harold G. Hernly, 118 North St. Asaph Street, Alexandria, Va. 22314. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Trailers, designed to be drawn by passenger automobiles, in initial movements, and buildings, in sections, mounted on wheeled undercarriages, from points in Bannock County, Idaho, to points in the United States, including Alaska but excluding Hawaii.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pocatello, Idaho.

No. MC 114211 (Sub-No. 218), filed January 10, 1974. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular

routes, transporting: (1) Tractors (except those with vehicle beds, bed frames, and fifth wheels), (2) equipment, designed for use in conjunction with tractors, (3) agricultural, industrial, and construction machinery, and equipment, (4) trailers, designed for the transportation of the above-described commodities (except those trailers designed to be drawn by passenger automobiles), (5) attachments, for the above-described commodities, (6) internal combustion engines, (7) parts of the above-described commodities when moving in mixed loads with such commodities, and (8) materials, equipment, and supplies (except commodities in bulk), used in the manufacture and distribution of the commodities described in (1) through (7) above, between Lexington, Nebr., on the one hand, and, on the other, points in North Dakota, South Dakota,

No. MC 114211 (Sub-No. 219), filed January 10, 1974. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Lumber, millwork, forest products, and such commodities as are manufactured by lumber mill and lumber yards, from the ports of entry on the International Boundary line between the United States and Canada, at or near Pembina, N. Dak., and Noyes, Minn., to points in the United States (except Alaska and Hawaii), restricted to the transportation of traffic in foreign commerce.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 114284 (Sub-No. 58), filed January 7, 1974. Applicant: FOX-SMYTHE TRANSPORTATION COMPANY, a Corporation, P.O. Box 82307, Stockyards Station, Oklahoma City, Okla. 73108. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, Kans. 66603. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the Amarillo, Tex., to points in Arizona, Arkansas, California, Colorado, New Mexico, Nevada, Oklahoma, Utah, Oregon, Washington, Iowa, Illinois, Kansas, Missouri, Nebraska, South Dakota and Minnesota, restricted to shipments originating at the plantsite and warehouse facilities utilized by John Morrell & Co., and destined to the above named states.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114457 (Sub-No. 180), filed January 11, 1974. Applicant: DART TRANSIT CO., a Corporation, 780 N. Prior Avenue, St. Paul, Minn. 55104. Ap-

plicant's representative: Michael F. Zell (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Wilson and Company, Inc., at or near Albert Lea, Minn., to points in Indiana, Michigan, and Ohio, restricted to traffic originating at the above-named plantsite and storage facilities and destined to the above-named destination points.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either St. Paul, Minn., or Chicago, Ill.

No. MC 115841 (Sub-No. 464), filed January 2, 1974. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 1215 Bankhead Highway West, P.O. Box 10327, Birmingham, Ala. 35202. Applicant's representative: Roger M. Shaner (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Meat and meat products (except commodities in bulk, and hides), from (1) St. Joseph, Mo., and Sioux City, Iowa, to points in Georgia, North Carolina, South Carolina, and Tennessee, and (2) from Omaha, Nebr., to Chattanooga, Knoxville, Nashville, Memphis, and Union City, Tenn., and points in Georgia, restricted to traffic originating at the plantsite and storage facilities of Armour & Company, and destined to the named points.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., Dallas, Tex., or Washington, D.C.

No. MC 116319 (Sub-No. 8), filed January 11, 1974. Applicant: WASHINGTON TRUCKING, INC., P.O. Box 107, Darrington, Wash. 98241. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Cement and pozzolans, in bulk, between points in Washington.

NOTE.—Applicant states that it is presently performing the operations requested herein in MC 116319 (Sub-No. 1) with the restriction: "restricted to shipments having a prior movement by rail". The sole purpose of the instant application is removal of said restriction. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 116319 (Sub-No. 9), filed December 26, 1973. Applicant: WASHINGTON TRUCKING, INC., P.O. Box 107, Darrington, Wash. 98241. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Au-

thority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, shakes and shingles*, from Darrington, Wash., to points in Washington, including Ports of Entry on the International Boundary line between the United States and Canada located in Washington.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 117344 (Sub-No. 231), filed January 10, 1974. Applicant: The MAXWELL CO., a Corporation, 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: James R. Stiversen, 50 West Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from the Dow Chemical Company at Midland, Mich., Hanging Rock, Ohio, Pevely, Mo., and Channahon Township, (Will County), Ill., to points on and east of U.S. Highway 85, restricted to shipments originating at the plant site and storage facilities of the Dow Chemical Company.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 117765 (Sub-No. 171), filed January 7, 1974. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth Street, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Flour*, in bags, from Buhler and Inman, Kans., to points in Oklahoma and Texas; (2) *malt beverages*, in containers and related advertising material, from Fort Worth, Tex., to Altus, Okla.; and (3) *roofing and roofing materials* in rolls, containers or bundles in straight or mixed shipments, from the facilities of Allied Materials Corp., Stroud, Okla., to points in Kansas and Missouri.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 117815 (Sub-No. 224), filed January 9, 1974. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 9th Floor, Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, from the facilities of F. J. Brach, Division of American Home Products Corp. located at or near Carol Stream, Ill., to points in Iowa and Nebraska.

NOTE.—Common control was approved in MC-F-11497. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed

necessary, applicant requests it be held at Chicago, Ill.

No. MC 117815 (Sub-No. 226), filed January 9, 1974. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 9th Floor, Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Elk Grove Village, Ill., to points in Michigan and Indiana, restricted to traffic originating at the above-named origin and destined to the above-named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 117883 (Sub-No. 184), filed January 11, 1974. Applicant: SUBLER TRANSFER, INC., 791 East Main Street, Versailles, Ohio 45380. Applicant's representative: Edward J. Subler, P.O. Box 62, Versailles, Ohio 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products* and products produced or distributed by manufacturers and converters of paper and paper products, from Dayton and West Carrollton, Ohio, to Clinton and Des Moines, Iowa; St. Louis, Mo.; and points in Illinois and Indiana on and north of U.S. Highway 40, restricted to traffic originating at the plantsite and storage facilities of the Oxford Paper Company, Howard Paper Mills, Inc., Bergstrom Paper Company, and the Specialty Paper Company at or near Dayton and West Carrollton, Ohio, and destined to the above named destinations.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117883 (Sub-No. 185), filed January 6, 1974. Applicant: SUBLER TRANSFER, INC., 791 East Main Street, Versailles, Ohio 45380. Applicant's representative: Edward J. Subler, P.O. Box 62, Versailles, Ohio 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass*, between the facilities of Fourco Glass Company float plant located at or near Jerry Run (Taylor County), W. Va., on the one hand, and, on the other, points in Illinois, Indiana, Michigan, and Wisconsin, restricted to the transportation of shipments originating at and destined to the above named origin and destination territory.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117940 (Sub-No. 103), filed January 14, 1974. Applicant: NATION-WIDE CARRIERS, INC., P.O. Box 104, Maple Blain, Minn. 55359. Applicant's representative: Donald I. Stern, Suite 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* as

are dealt in by retail department stores (except foodstuffs and furniture), and (2) *Furniture*, as are dealt in by retail department stores when moving with commodities dealt in by retail department stores (except foodstuffs), (a) from New York, N.Y., Philadelphia, Pa., points in New Jersey, Massachusetts, and Connecticut, to Lansing and Grand Rapids, Mich., and Minneapolis-St. Paul and Minnetonka, Minn., and (b) from Chicago, Ill., to Minneapolis-St. Paul and Minnetonka, Minn., limited to traffic originating at the above named origin points and destined to the plant sites and storage facilities of Modern Merchandising, Inc. and its wholly owned subsidiaries.

NOTE.—Applicant holds contract authority in MC-114789 in Sub-No. 1 and Subs. thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at either Minneapolis or St. Paul, Minn.

No. MC 119654 (Sub-No. 26), filed January 7, 1974. Applicant: HI-WAY DISPATCH, INC., 1401 W. 26th Street, Marion, Ind. 46952. Applicant's representative: Alki E. Scopellitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, caps, covers, and tops therefor, and paper cartons*, from Plainfield, Ill., to points in Ohio and Wisconsin; and (2) *rejected shipments of glass containers, caps, covers, and tops therefor*, from points in Ohio and Wisconsin to Plainfield, Ill.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind. or Chicago, Ill.

No. MC 119654 (Sub-No. 27), filed January 9, 1974. Applicant: HI-WAY DISPATCH, INC., 1401 W. 26th Street, Marion, Ind. 46952. Applicant's representative: Alki E. Scopellitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic containers, and caps, and stoppers therefor*, from Gas City, Ind., to Milwaukee, Wis.; Covington and Louisville, Ky.; St. Louis, Joplin, St. Joseph, North Kansas City, and Kansas City, Mo.; and points in that part of Illinois on and north of U.S. Highway 36, those in that part of Ohio on and west of Ohio Highway 3, and those in Michigan on, south and east of Michigan Highway 46; and (2) *fiberboard boxes and sheets*, from Gas City, Ind., to Charlotte, Mich.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 119656 (Sub-No. 24), filed January 4, 1974. Applicant: NORTH EX-FRESS, INC., 219 Main Street, Winamac, Ind. 46996. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal tubing*, from Winamac, Ind., to points in Iowa, Kentucky, Minnesota, Missouri, New Jersey, New York, Pennsylvania, and Wisconsin; and (2) *materials used in the manufacture of metal tubing*, from the destination points named in (1) above, to Winamac, Ind.

NOTE.—Applicant states that the requested authority can be tacked within authority held in MC-F-11568 on iron and steel articles, at Winamac, Ind., to provide a through service between Chicago, Ill., and points within 75 miles thereof, on the one hand, and, on the other, the points in Iowa, Kentucky, Minnesota, Missouri, New Jersey, New York, Pennsylvania, and Wisconsin. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119669 (Sub-No. 42), filed December 28, 1974. Applicant: TEMPCO TRANSPORTATION, INC., 546 South 31A, P.O. Box 886, Columbus, Ind. 47201. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant-sites and storage facilities of Wilson & Co., located at or near Albert Lea, Minn., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119669 (Sub-No. 43), filed December 28, 1973. Applicant: TEMPCO TRANSPORTATION, INC., 546 South 31A, P.O. Box 886, Columbus, Ind. 47201. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant-sites and storage facilities of Farmland Foods, Inc., located at or near Carroll, Denison, and Iowa Falls, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119741 (Sub-No. 48), filed January 10, 1974. Applicant: GREEN FIELD TRANSPORT CO., INC., P.O. Box 1235, Fort Dodge, Iowa 50501. Applicant's representative: Donald L. Stern, Suite 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the storage facilities of Spencer Foods, Inc., at or near Fremont, Nebr., to points in Minnesota, Iowa, Kansas, Missouri, Wisconsin, and Illinois.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Omaha, Nebr.

No. MC 121060 (Sub-No. 30), filed January 9, 1974. Applicant: ARROW TRUCK LINES, INC., P.O. Box 5568, Birmingham, Ala. 35207. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Suite 425, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies used in the manufacture and distribution of ceiling systems, lighting systems, and parts and accessories thereof*, from points in the United States in and east of Minnesota, Iowa, Missouri, Kansas, Oklahoma, and Texas, to the facilities of Litecraft-Luminous Ceilings, Division of the Celotex Corporation located at or near Scottsboro, Ala., restricted to the transportation of shipments moving to or through the facilities of Litecraft-Luminous Ceilings Division of the Celotex Corporation located at or near Scottsboro, Ala.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 134142 (Sub-No. 4), filed January 2, 1974. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, 21st and Sidney Streets, Fort Scott, Kans. 66701. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese foods, cheese spreads, and materials and supplies used in the manufacturing and processing and packaging of cheese, cheese foods and cheese spreads*, (1) between Green Bay, Wis., on the one hand, and, on the other, points in Iowa, Nebraska, Illinois, Kansas, Missouri, Colorado, New Mexico, and those in Texas on and north of a line beginning at the New Mexico-Texas State Boundary line and extending easterly over U.S. Highway 82

to its intersection with Texas Highway 283, thence northerly along Texas Highway 283 to the Texas-Oklahoma State Boundary line, thence westerly along the Texas-Oklahoma State Boundary line to the Oklahoma-New Mexico State Boundary line, thence extending southerly along the Oklahoma-New Mexico State Boundary line to the point of beginning; and (2) between Carthage, Mo., on the one hand, and, on the other, points in Wisconsin, Illinois, Kansas, Missouri, Nebraska, Colorado, New Mexico, Michigan, North Carolina, Georgia, Ohio, Arkansas, Alabama, Florida, Kentucky, Louisiana, Tennessee, South Carolina, Mississippi, and those in Texas in and north of a line beginning at the New Mexico-Texas State Boundary line and extending easterly over U.S. Highway 82 to its intersection with Texas Highway 283, thence northerly along Texas Highway 283 to the Texas-Oklahoma State Boundary line, thence westerly along the Texas-Oklahoma State Boundary line to the Oklahoma-New Mexico State Boundary line, thence southerly along the Oklahoma-New Mexico State Boundary line to the point of beginning, under a continuing contract or contracts with L. D. Shrieber Cheese Co. of Green Bay, Wis.

NOTE.—Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Green Bay, Wis.

No. MC 124978 (Sub-No. 576), filed January 10, 1974. Applicant: SCHWERMANN RUCKING CO., a Corporation, 611 South 26th Street, Milwaukee, Wis. 53246. Applicant's representative: James R. Ziperski (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nickel pellets*, in bulk, from ports of entry on the International Boundary line between United States and Canada, at Buffalo, N.Y., Detroit and Port Huron, Mich., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in MC 113832 Sub 68, therefore dual operations may be involved. Common control may also be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 124211 (Sub-No. 241), filed January 2, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, Downton Station, Omaha, Nebr. 68101. Applicant's representative: Thomas I. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat byproducts, dairy products and articles distributed by meat packinghouses*, as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank or hopper vehicles), from points in Madison County, Nebr., to points in Connecticut, Delaware, Maine,

Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) *motor vehicle parts, accessories and supplies* (except commodities in bulk), from points in Madison County, Ind., and Montgomery County, Ohio, to points in Colfax, Cuming, Dodge, Platte, Washington, and Wayne Counties, Nebr., restricted to traffic originating at the named origins.

NOTE.—Common control was approved in MC-F-11887. Applicant states that the requested authority in (1) above, can be tacked with its existing authority at points in Madison County, Nebr., in Sub-No. 39 to provide a through service from Phelps City, Mo., to the destination points named herein, and in Sub-No. 129 to provide a through service from Liberal, Kans., to points in Delaware, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr.

No. MC 124692 (Sub-No. 130), filed January 7, 1974. Applicant: SAMMONS TRUCKING, a Corporation, P.O. Box 1447, Missoula, Mont. 59801. Applicant's representative: Gene P. Johnson, 425 Gate City Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery, parts, and attachments*, from Aberdeen, S. Dak., to points in California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming, restricted to traffic originating at the facilities of Farmhand, Inc.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 127355 (Sub-No. 15), filed January 7, 1974. Applicant: M&N GRAIN COMPANY, a Corporation, P.O. Box P, Nevada, Mo. 64772. Applicant's representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Soybean meal*, from Des Moines, Eagle Grove, and Ft. Dodge, Iowa; Emporia, Fredonia, and Wichita, Kans.; Lincoln, Nebr.; and Mankato, Minn., to points in Idaho and Utah, under contract with The Pillsbury Company, Minneapolis, Minn.

NOTE.—Applicant holds common carrier authority in MC 136553, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Minneapolis, Minn.

No. MC 127579 (Sub-No. 2), filed January 7, 1974. Applicant: PENN-MAR-VA TRANSPORTATION CORPORATION, P.O. Box 343, Stenersen Lane, Cockeysville, Md. 21030. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Au-

thority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Beer and malt beverages*, from Williamsburg, Va., to Annapolis, Glyndon, Laurel, and Baltimore, Md., and (2) *empty used containers*, from Annapolis, Glyndon, Laurel, and Baltimore, Md., to Williamsburg, Va.

NOTE.—Common control may be involved. Applicant states that the requested authority can be tacked in the lead docket, at Baltimore, Md., with (1) above, to serve points in Maryland, Virginia, and West Virginia within 200 miles of Baltimore, Md., and points in Pennsylvania within 100 miles of Baltimore, Md. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 127726 (Sub-No. 3), filed January 9, 1974. Applicant: LEMAN KNIGHT, doing business as PETE KNIGHT TRUCKING COMPANY, R.F.D. 1, Detroit, Ala. 35552. Applicant's representative: Dorald B. Morrison, 717 Deposit Guaranty Bank Building, P.O. Box 22628, Jackson, Miss. 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the plantsite of the Leo Owsley Co. located at or near Millport, Ala., to points in Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin, under contract or contracts with Leo Owsley and Johnny L. Owsley, doing business as Leo Owsley Co., at Millport, Ala.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 128030 (Sub-No. 55), filed November 12, 1973. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Rural Route No. 1, Urbana, Ill. 61801. Applicant's representative: James F. Flanagan, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* (1) from La Crosse and Sheboygan, Wis., to Danville, Decatur, Champaign, and Paris, Ill., (2) from Detroit, Mich., to Champaign, Ill., (3) from Milwaukee, Wis., to Decatur, Ill., (4) from Newport, Ky., Peoria, Ill., Detroit, Mich., St. Paul, Minn., St. Louis, Mo., Columbus, Ohio, and La Crosse, Milwaukee, and Sheboygan, Wis., to Attica, Ind., (5) from Fort Wayne, Ind., to Champaign, Ill., and (6) from St. Paul, Minn., to Urbana, Ill.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Springfield or Chicago, Ill.

No. MC 128030 (Sub-No. 57), filed December 12, 1973. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Rural Route No. 1, Urbana, Ill. 61801. Applicant's representative: James F. Flanagan, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transport-

ing: *Glass containers and closures* thereof from the plantsite of Midland Glass Co. located at or near Terre Haute, Ind., to points in Illinois, Michigan, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Springfield or Chicago, Ill.

No. MC 128375 (Sub-No. 106), filed January 7, 1974. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household and personal care products and related items, and materials and supplies*, used in the manufacture and distribution thereof, between Atlanta, Ga., on the one hand, and, on the other, points in Mississippi, Alabama, Tennessee, Virginia, North Carolina, South Carolina, Florida, West Virginia, and Georgia, under a continuing contract with Amway Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Lincoln, Nebr.

No. MC 128383 (Sub-No. 48), filed January 11, 1974. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, Classes A and B explosives, and motor vehicles requiring the use of special equipment), having a prior or subsequent movement by air or moving in a substitute for air service, between Kansas City International Airport and Fairfax Airport, Kans., Kansas City Municipal Airport, Mo., and points in Arizona, California, and Nevada, and those in New Mexico on and west of Interstate Highway 25 in nonradial movements.

NOTE.—Applicant states that the requested authority can be tacked with its pending authority at Kansas City International Airport to provide service between the sought territory, on the one hand, and, on the other, Chicago O'Hare International Airport, the Minneapolis-St. Paul International Airport, Cleveland-Hopkins International Airport, and John F. Kennedy International Airport at New York City, N.Y. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 133119 (Sub-No. 41), filed January 2, 1974. Applicant: HEYL TRUCK LINES, INC., 235 Mill Street, Akron, Iowa 51001. Applicant's representative: A. J. Swanson, P.O. Box 81849, 521 South 14th Street, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Potatoes*, frozen and *potato products*, from Clark, S. Dak., to points in Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisi-

ana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Sioux Falls, S. Dak., Sioux City, Iowa, or Omaha, Nebr.

No. MC 133119 (Sub-No. 44), filed January 14, 1974. Applicant: HEYL TRUCK LINES, INC., 235 Mill St., Akron, Iowa 51001. Applicant's representative: Roger Heyl (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except frozen potatoes and potato products), from Grand Forks, N. Dak., to points in Arkansas, Arizona, California, Colorado, Iowa, Kansas, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, South Dakota, Texas, Utah, and Wyoming, restricted to traffic originating at Grand Forks, N. Dak.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Omaha, Nebr., or Grand Forks, N. Dak.

No. MC 133655 (Sub-No. 66), filed January 7, 1974. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 4168, Amarillo, Tex. 79105. Applicant's representative: Charles W. Singer, Suite 1000, 327 South La Salle St., Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Amarillo, Tex., to points in Mississippi, Kentucky, Louisiana, Tennessee, Michigan, Minnesota, Maine, Maryland, Massachusetts, Connecticut, Delaware, New Hampshire, New Jersey, Ohio, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, and West Virginia, restricted to shipments originating at the plantsite and facilities utilized by John Morrell & Co.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 134405 (Sub-No. 17), filed January 10, 1974. Applicant: BACON TRANSPORT COMPANY, a Corporation, P.O. Box 1134, Ardmore, Okla. 73401. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer ingredients*, from Houston, Tex., to points in Arkansas, Louisiana, Mississippi, and Tennessee.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary,

applicant requests it be held at Houston, Tex.

No. MC 134562 (Sub-No. 2), filed January 10, 1974. Applicant: BATTLE ENTERPRISES, INC., P.O. Box 211, Nichols, S.C. 29581. Applicant's representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, S.C. 29201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer in bag and bulk*, from points in Columbus, Brunswick, and New Hanover Counties, N.C., to points in South Carolina.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbia, S.C., Charlotte, N.C., or Washington, D.C.

No. MC 134599 (Sub-No. 99), filed January 10, 1974. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic or rubber coated cloth or fabric, v belts, transmission belts, rubber compounds, sprockets, printed forms, pulpboard, paper and paper products, and raw materials and supplies* used in the manufacture and production of such commodities (except commodities in bulk or which, because of size or weight require special handling or special equipment), between Brownville, N.Y., and Philadelphia, Pa., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under continuing contract with Uniroyal, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 135858 (Sub-No. 3), filed January 14, 1974. Applicant: A. G. KNORR, ROBERT D. KNORR AND GENE A. KNORR, doing business as KNORR TRUCKING, Sawyer, N. Dak. 58781. Applicant's representative: Harris P. Kenner, 615 South Broadway, P.O. Box 36, Minot, N. Dak. 58701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, toe hitches, raw steel and component parts for feed lot equipment*, from shipper's plantsite at Martin, N. Dak., to shipper's plantsite at Garden City, Kans.; and (2) *prefabricated steel and component parts for manufacturing trailers*, from shipper's plantsite at Garden City, Kans., to shipper's plantsite at Martin, N. Dak., under contract with Bocats, Inc., at Garden City, Kans.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Minot, or Fargo, N. Dak.

No. MC 135913 (Sub-No. 4), filed January 10, 1974. Applicant: BREEN TRUCKING, INC., 3459 Church Road, Grosse Ile, Mich. 48138. Applicant's representative: Theodore Polydoroff, 1250

Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Coated foundry sand*, from the facilities of C-E Cast Products at or near Rockwood, Mich., to points in Alabama, Illinois, Indiana, Kentucky, Maryland, New York, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin, under a continuing contract with C-E Cast Products and (2) *sand*, from points in Wisconsin and Illinois, to the facilities of C-E Cast Products at or near Rockwood, Mich., under a continuing contract with C-E Cast Products.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 136553 (Sub-No. 24), filed January 14, 1974. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, Iowa 52001. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel, rock, stone, and crushed rock*, in dump vehicles, between points in Carroll, Jo Daviess, and Stephenson Counties, Ill., Crawford, Grant, Iowa, Green, and Lafayette Counties, Wis., and Clayton, Clinton, Dubuque, and Jackson Counties, Iowa.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Chicago, Ill., or Milwaukee, Wis.

No. MC 136786 (Sub-No. 44), filed January 10, 1974. Applicant: ROBCO TRANSPORTATION, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, Minn. 55416. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), from Minneapolis, St. Paul, and Worthington, Minn.; Huron, S. Dak.; Omaha, Nebr.; Mason City and Sioux City, Iowa; and St. Joseph, Mo., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (except Memphis), restricted to traffic originating at the plantsite and storage facilities utilized by Armour & Co., at the named origins and destined to the named states.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Minneapolis or St. Paul, Minn.

No. MC 136553 (Sub-No. 22), filed January 7, 1974. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, Iowa 52001. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and*

dry fertilizer materials, from Minnesota City, Minn., to points in Illinois and Iowa.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority (1) at Dubuque, Iowa, to serve points in Wisconsin and Missouri; and (2) at Streator, Ill., to serve portions of Michigan and Indiana. Applicant indicates that other common points exist but does not specify them as tacking possibilities. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 138018 (Sub-No. 5), filed January 9, 1974. Applicant: REFRIGERATED FOODS, INC., 1429 33d Street, Denver, Colo. 80205. Applicant's representative: Ailyn L. Westergren, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packageways as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the facilities of John Morrell & Co., Inc., at or near Amarillo, Tex., to points in Arizona, California, Nevada, Utah, Idaho, Montana, Oregon, Washington, Colorado, Nebraska, Kansas, Minnesota, Wisconsin, and Illinois, restricted to traffic originating at the named facilities and destined to the name of destinations.

NOTE.—Common control may be involved. Dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 138259 (Sub-No. 3), filed January 14, 1974. Applicant: NORTHWEST EXPRESS, INC., 3318 Third Avenue North, Billings, Mont. 59101. Applicant's representative: J. F. Maglen, P.O. Box 1581, Billings, Mont. 59103. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, forest products, wood products, particle board and fiber board*, from points in Beaverhead, Flathead, Lake, Lincoln, Missoula, and Ravalli Counties, Mont., to points in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Kalispell, Missoula, or Billings, Mont.

No. MC 138304 (Sub-No. 8), filed January 10, 1974. Applicant: NATIONAL PACKERS EXPRESS, INC., 29 South La Salle Street, Chicago, Ill. 60603. Applicant's representative: Craig B. Sherman (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Steel nuts, bolts, screws, and metal fasteners*, from New York and Garden City, N.Y., Hoboken, Port Newark, Elizabeth, Jersey City, and Port Elizabeth, N.J., and Philadelphia, Pa., to points in Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Missouri, and Michigan.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C., New York, N.Y., or Chicago, Ill.

No. MC 138313 (Sub-No. 5) (Amendment), filed June 17, 1973, published in the FEDERAL REGISTER issue of November 8, 1973, and republished as amended this issue. Applicant: MACK E. BURGESS, doing business as BUILDERS' TRANSPORT, 499 14th Street SW., Great Falls, Mont. 59404. Applicant's representative: Irene Warr, Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Lumber, millwork, and wood products*, from points in Idaho, Oregon, and Washington, to points in Montana; (2) *lumber, millwork, wooden poles, wooden posts, and wooden beams*, from points in Adams, Benewah, Boise, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, and Washington Counties, Idaho; Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Deschutes, Douglas, Hood River, Jefferson, Klamath, Lane, Lincoln, Linn, Multnomah, Polk, Tillamook, Union, Wasco, Washington, and Yamhill Counties, Oreg.; and Chelan, Clark, Cowitz, Grays Harbor, King, Klickitat, Lewis, Mason, Okanogan, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Whatcom, and Yakima Counties, Wash., to points in Montana; (3) *asbestos shingles, asbestos siding, asbestos roof coating, asbestos roofing, asphalt cement, rolled asphalt felts, asphalt primer, asphalt roof coating, rolled asphalt roofing, asphalt shingles, asphalt siding, asphalt and vinyl floor tile, and linoleum, tile and plastic cements and pastes*, from points in Pierce County, Wash., to points in Montana; and (4) *fencing wire, galvanized roofing and steel poles and posts*, from points in Multnomah and Washington Counties, Oreg., to points in Montana.

NOTE.—The purposes of this republication are (1) to amend the commodity description in (1) above, and (2) to add the authority described in (2) through (4) above. Applicant states it is presently performing the operations described herein. By this application, applicant seeks to convert its authorized contract carrier authority to common carrier authority. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Great Falls, Billings, or Missoula, Mont.

No. MC 138351 (Sub-No. 2), filed December 20, 1973. Applicant: DENIS & ROBERT TRANSPORT, INC., Rural Route No. 6, Granby Shefford Co. Province of Quebec, Canada. Applicant's representative: David M. Marshall, 125 State Street, Suite 200, Springfield, Mass. 01103. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products and materials used for packing, and parts and supplies used or useful for the maintenance and repair of packing machinery*, between ports of entry on the International Boundary line

between the United States and Canada located in Maine, New Hampshire, Vermont, New York, and Michigan, on the one hand, and, on the other, points in the United States north of Tennessee and North Carolina and east of Minnesota, Iowa, and Missouri, under a continuing contract with Denis & Robert Engr. and (2) *paper and paper products, and supplies, materials, and equipment used or useful in the printing of paper*, between ports of entry on the International Boundary line between the United States and Canada located in Maine, New Hampshire, Vermont, New York, and Michigan, on the one hand, and, on the other, points in the United States north of Tennessee and North Carolina and east of Minnesota, Iowa, and Missouri, under a continuing contract with Imprimerie Montreal-Granby Press, Ltée.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Montpelier, Vt., Albany, N.Y., or Concord, N.H.

No. MC 138662 (Sub-No. 1), filed December 17, 1973. Applicant: JERRY M. GREEN, doing business as PALACE TRANSFER AND STORAGE CO., 3200 W. Picacho, Las Cruces, N. Mex. 88901. Applicant's representative: Edwin E. Piper, Jr., 1115 Simms Building, Albuquerque, N. Mex. 87101. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Used household goods, and unaccompanied baggage and personal effects*, between points in Dona Ana, Otero, Luna, Hidalgo, and Grant Counties, N. Mex., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of a pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex., or El Paso, Tex.

No. MC 138736 (Sub-No. 7), filed January 8, 1974. Applicant: F B M TRUCKING, INC., 310 East Lanier Avenue, Fayetteville, Ga. 30214. Applicant's representative: Virgil H. Smith, 1587 Phoenix Boulevard, Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Lift trucks and lift trucks attachments*, (1) from New Orleans, La., and Savannah, Ga., to the plant site of C. Itoh & Co. (America), Inc., at or near Decatur, Ga., restricted to shipments having an immediate prior movement by water in foreign commerce, and (2) from the plant site of C. Itoh & Co. (America), Inc., at or near Decatur, Ga., to points in Alabama, Florida, Mississippi, North Carolina, South Carolina, and Tennessee.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 138869 (Sub-No. 4), filed January 7, 1974. Applicant: W. T. MYLES TRANSPORTATION COMPANY, a Corporation, 4481 Moreland Avenue, P.O. Box 321, Conley, Ga. 30027. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree Street NW., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polypropylene waste* (except in bulk), from Hazlehurst, Nashville, and Bainbridge, Ga., to points in Cleveland, Ohio, and Ypsilanti, Mich., under contract with Patchogue-Plymouth Company, Hazlehurst, Ga., and Charles Pollock & Sons, Inc., Cleveland, Ohio.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 138984 (Sub-No. 2), filed January 14, 1974. Applicant: PARADIS TRANSFER AND STORAGE CO., INC., 922 Whitman, Medford, Oreg. 97501. Applicant's representative: Robert R. Hollis, 400 Pacific Building, Portland, Oreg. 97204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages* (except alcoholic beverages), between Grants Pass, Medford, and Klamath Falls, Oreg., on the one hand, and, on the other, Redding, Calif., under a continuing contract or contracts with the Medford Coca-Cola Bottling Co., Inc.

NOTE.—Applicant holds common carrier authority in MC 64820 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Medford or Portland, Oreg.

No. MC 139068 (Sub-No. 1), filed January 7, 1974. Applicant: ROAD-RUNNER TRANSPORTATION, INC., 1024 Topaz Lane, Villa Rica, Ga. 30180. Applicant's representative: Virgil H. Smith, 1587 Phoenix Boulevard, Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric aluminum cable, cable clamps or joints, circuit breakers or switches, or parts, transformers and transformer parts, pulley blocks, capstans, winches, or windlasses, pole line construction material, and plastic products*, (1) from the plant site of Western Power Products, Inc. at Villa Rica, Ga., to points in the United States on and east of U.S. Highway 85 including points in New Mexico, North Dakota, South Dakota, and Oregon (Portland only) and (2) from the plant site of Western Power Products, Inc., at Portland, Oreg., to the plant site of Western Power Products, Inc., at Villa Rica, Ga., restricted against articles requiring heavy or specialized equipment.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 139226 (Sub-No. 1), filed January 8, 1974. Applicant: SENTRY TRANSPORT, INC., 5525 East 51st Street, Tulsa, Okla. 74135. Applicant's representative: William L. Peterson, Jr., 401 North Hudson, P.O. Box 917,

Oklahoma City, Okla. 73101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes*, between points in Alabama, Arkansas, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

NOTE.—Applicant has pending motor carrier contract authority in MC-139071, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Tulsa, Okla., or Oklahoma City, Okla.

No. MC 139231 (Sub-No. 2), filed January 9, 1974. Applicant: MOORE HORSE TRANSPORT LTD., 84 Thornlee Cr. NW., Calgary, Alberta, Canada. Applicant's representative: John R. Davidson, Room 805, Midland Bank Building, Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Race and show horses and equipment*, including tack, saddles, and race carts, from those Ports of Entry on the International Boundary line between the United States and Canada located in Montana, on the one hand, and, on the other, Phoenix, Ariz.; Los Angeles, Calif.; Coeur D'Alene, Idaho; Seattle, Wash.; Lexington, Ky.; Minneapolis, Minn.; Kalspell and Great Falls, Mont.; Reno, Nev.; Las Cruces, N. Mex.; Portland, Oreg.; Kingsville and El Paso, Tex.; and Salt Lake City, Utah.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Great Falls, Mont.

No. MC 139235 (Sub-No. 1), filed January 10, 1974. Applicant: MAYNARD NADLER, 113 W. Corning, Peotone, Ill. 60468. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron, steel, and plastic containers, drums and pails, covers, caps, and handles*, from the plant site of Bennett Industries Division of Growth International Industries Corporation at Peotone, Ill., to points in Indiana; Lee, Des Moines, Louisa, Muscatine, Scott, Clinton, Jackson, and Dubuque Counties, Iowa; Louisville, Ky.; St. Louis, Mo.; Ohio; Dane, Green, Jefferson, Kenosha, Milwaukee, Racine, Rock, Walworth, and Waukesha Counties, Wis. and (2) *iron, steel, and plastic containers, drums and pails, covers, caps, and handles*, between the plant site of Bennett Industries Division, Growth International Industries Corp. at Peotone, Ill., on the one hand, and, on the other the plant sites of Bennett Industries Division, Growth International Industries Corp. at Englishtown, N.J., and Lithonia, Ga., under contract with Bennett Industries Division, Growth International Industries Corp.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 139238 (Sub-No. 1), filed January 9, 1974. Applicant: PAUL B. BETTERTON, Route 2, Box 194, Gretna, Va. 24557. Applicant's representative: Henry A. Davis, Jr., P.O. Box 827, Chatham, Va. 24531. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and ingredients*, for fertilizer manufacture, from Winston-Salem, N.C., to points in Franklin, Henry, and Pittsylvania Counties, Va., under contract with International Minerals and Chemical Corporation. If a hearing is deemed necessary, applicant does not specify location.

No. MC 139407 (Sub-No. 1), filed January 14, 1974. Applicant: AMERICAN PARCEL SERVICE, INC., 71 Genessee Avenue, Paterson, N.J. 07503. Applicant's representative: John B. M. Frohling, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Business records and memoranda, printed material and printing proofs, EDP material, business machines and spare parts* of small size not requiring special handling, between points in Passaic, Bergen, Essex, and Morris Counties, N.J., on the one hand, and, on the other, New York City, Long Island, points in Westchester and Orange Counties, N.Y.; Boston, Mass.; and Philadelphia, Pa.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 139423 (Sub-No. 1), filed December 18, 1973. Applicant: PETERSON BROTHERS MFG. CO., a corporation, Carney, Mich. 49812. Applicant's representative: Mr. Eugene Peterson (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Forest products*, viz.: Wood chips, sawdust shavings, wood waste, and pulpwood, from Carney, Menominee County, Mich., to pulp mills and paper mills in Brown, Outagamie, Winnebago, Lincoln, Wood, Marathon, and Portage Counties, Wis., under a continuing contract with American Can Co.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Menominee, Mich., Marinette, Wis., or Green Bay, Wis.

No. MC 139435, filed December 21, 1973. Applicant: TERMINAL TRANSFER COMPANY, a corporation, 600 Sunshine Road, Kansas City, Kans. 66115. Applicant's representative: Lucy Kennard Bell, Suite 910 Fairfax Bldg., 101 West Eleventh Street, Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs and pet foods* (except frozen foods and commodities in bulk), and (2) *advertising matter, displays, and premiums in mixed loads with foodstuffs and pet foods*, from the plantsite and warehouse facilities of the Quaker Oats Company, at or near St. Joseph, Mo., to the Kansas City, Mo.-Kans., Commercial Zone, as defined by the Commission, under contract with the Quaker Oats Company.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Kansas City, or Jefferson City, Mo.

No. MC 139436, December 17, 1973. Applicant: TRUCK AND BUS TOWING AND TIRE, 107 East 11th Street, Lockport, Ill. 60441. Applicant's representative: James J. Hammer (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Motor vehicles, as replacements for vehicles which have been disabled, between points in Illinois, Indiana, Iowa, Wisconsin, and Michigan.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Joliet, or Chicago, Ill.

PASSENGER APPLICATION(S)

No. MC 3647 (Sub-No. 450), filed December 26, 1973. Applicant: TRANS-PORT OF NEW JERSEY, 180 Boyden Avenue, Maplewood, N.J. 07040. Applicant's representative: John F. Ward (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Passengers and their baggage in the same vehicle with passengers, in special round trip operations, beginning and ending at New York, N.Y., and points in Atlantic, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Morris, Middlesex, Passaic, Salem, and Union Counties, N.J., and extending to Liberty Bell Park Race Track, Bensalem Township, Pa., during the authorized racing season each year.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 139210 (clarification), filed September 24, 1973, published in the Federal Register issue of December 13, 1973, and republished as clarified this issue. Applicant: WESLEE ENTERPRISES INC., doing business as ALASKA-YUKON MOTORCOACHES, 1440 Washington Building, 1325 Fourth Avenue, Seattle, Wash. 98101. Applicant's representative: Paul C. Gibbs (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: Passengers and their baggage, and express in the same vehicle with passengers, in charter operations; (1) Between Fairbanks, Alaska and Valdez, Alaska: From Fairbanks over Alaska Highway 2

to junction Alaska Highway 4, thence over Alaska Highway 4 to Valdez, and return over the same route; (2) Between Anchorage, Alaska and Valdez, Alaska: From Anchorage over Alaska Highway 1 to junction Alaska Highway 4, thence over Alaska Highway 4 to Valdez, and return over the same route; (3) Between Anchorage, Alaska and the International Boundary line between the United States and Canada at the Yukon Territory: From Anchorage over Alaska Highway 1 to junction Alaska Highway 2, thence over Alaska Highway 2 to the International Boundary line between the United States and Canada at the Yukon Territory, and return over the same route; (4) Between the International Boundary line between the United States and Canada at British Columbia and Haines, Alaska: From British Columbia, over Alaska Highway 7 to Haines, also serving Porcupine, and return over the same route; and (5) Between Haines, Alaska and Skagway, Alaska: From Haines over the Alaska Marine Highway to Skagway, and return over the same route.

NOTE.—The purposes of this republication are (a) to delete special operations and (b) to clarify (5) to read over the Alaska Marine Highway which previously read "unnumbered highway." If a hearing is deemed necessary, applicant requests it be held at Anchorage or Fairbanks, Alaska.

No. MC 139451, filed December 17, 1973. Applicant: MEXICOACH, INC., 1050 Kettner Ave., San Diego, Calif. 92101. Applicant's representative: Frederick J. Kling, 1901 Avenue of the Stars, No. 1800, Los Angeles, Calif. 90067. Authority sought to operate as a common carrier by motor vehicle over regular routes transporting: Passengers and their baggage, between the Amtrak Depot, San Diego, and the Port of Entry on the International Boundary line between the United States and the Republic of New Mexico located at or near San Ysidro, Calif.; From the Amtrak Depot in San Diego at Broadway and Kettner east over Broadway to junction N. India Street, thence east over N. India Street to the southern approach to Interstate Highway 5 thence over Interstate Highway 5 to San Ysidro, Calif., and return over the same route, serving no intermediate points, restricted to the transportation of passengers and their baggage having a prior or subsequent transportation by rail only.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Los Angeles or San Diego, Calif.

BROKER APPLICATION(S)

No. MC 130226, filed January 8, 1974. Applicant: PENINSULA MOTOR CLUB, a Corporation, P.O. Box 22807, 1515 N. Westshore Blvd., Tampa, Fla. 33622. Applicant's representative: Morris J. Levin, 1620 Eye Street NW., Washington, D.C. 20006. Authority sought to engage in operation, in interstate or foreign commerce, as a broker at Bradenton, Fort Meyers, Gainesville, Holiday, Lakeland, Ocala, Pensacola, Sarasota, Tallahassee, Tampa, Panama City, and Naples, Fla., to sell or offer to sell the transportation of individual passengers and groups of passengers and their baggage, in special and charter operations, between points in the following Florida counties: Alachua, Bay, Bradford, Calhoun, Charlotte, Citrus, Collier, Columbia, De Soto, Duval, Escambia, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Okaloosa, Pasco, Polk, Santa Rosa, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, and Washington, on the one hand, and, on the other, points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla.

No. MC 130227, filed November 1, 1973. Applicant: LOWEDA H. LOVE, doing business as WESTERN TOUR AND TRAVEL, 1060 Washburn Avenue, Idaho Falls, Idaho 83401. Applicant's representative: John M. Ohman, Cambridge Law Center, P.O. Box 1841, 690 Cambridge Dr., Idaho Falls, Idaho 83401. Authority sought to engage in operation, in interstate or foreign commerce, as a broker at Idaho Falls, Idaho, to sell or offer to sell the transportation of individual passengers and groups of passengers, with personal luggage, in common carrier motor vehicles, between points in the United States (except Alaska and Hawaii). If a hearing is deemed necessary, the applicant requests it be held at Pocatello, Boise, Idaho, or Salt Lake City, Utah.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-3572 Filed 2-13-74; 8:45 am]

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PART II



ENVIRONMENTAL PROTECTION AGENCY

■

FEEDLOTS POINT SOURCE CATEGORY

Effluent Guidelines and Standards

Title 40—Protection of the Environment
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND
STANDARDS

PART 412—FEEDLOTS POINT SOURCE
CATEGORY

Effluent Limitations Guidelines

On September 7, 1973, notice was published in the *FEDERAL REGISTER* (38 FR 24466) that the Environmental Protection Agency (EPA or Agency) was proposing effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the duck subcategories, and all subcategories except ducks of the feedlots category of point sources.

The purpose of this notice is to establish final effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources in the feedlots category of point sources, by amending 40 CFR Chapter I, Subchapter N, to add a new Part 412. This final rulemaking is promulgated pursuant to sections 301, 304(b) and (c), 306(b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314(b) and (c), 1316(b) and (c) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500. Regulations regarding cooling water intake structures for all categories of point sources under section 316(b) of the Act will be promulgated in 40 CFR Part 402.

In addition, the EPA is simultaneously proposing a separate provision which appears in the proposed rules section of the *FEDERAL REGISTER*, stating the application of the limitations and standards set forth below to users of publicly owned treatment works which are subject to pretreatment standards under section 307(b) of the Act. The basis of that proposed regulation is set forth in the associated notice of proposed rulemaking.

The legal basis, methodology and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the notice of public review procedures published August 6, 1973 (38 FR 21202) and in the notice of proposed rulemaking for all subcategories except ducks and the ducks subcategory. In addition, the regulations as proposed were supported by two other documents: (1) The document entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category" (August 1973) and (2) the document entitled "Economic Analysis of Proposed Effluent Guidelines, Feedlots" (August 1973). Both of these documents were made available to the public and circulated to interested persons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of publication. Prior public par-

ticipation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties were described in the preamble to the proposed regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

The regulation as promulgated contains important changes from the proposed regulation. The following discussion outlines the reasons why these changes were made and why other suggested changes were not implemented.

(a) Summary of comments.

The following responded to the request for written comments contained in the preamble to the proposed regulation: Five Federal agencies including the U.S. Department of Commerce and the U.S. Department of Agriculture; sixty-four national, state and local trade associations including the National Livestock Feeders Association, American National Cattlemen's Association, National Milk Producers Federation, National Pork Producers Council, and the National Broiler Council; eight public interest groups including the Natural Resources Defense Council and the Lake Gage-Lime Lake Association; twenty-one universities and colleges including Iowa State University, Kansas State University, University of Minnesota, University of Wisconsin, Texas A and M University, Oklahoma State University and Oregon State University; twenty state and local governmental agencies including the Missouri Clean Water Commission, Wisconsin Department of Natural Resources, Minnesota Pollution Control Agency, Illinois Environmental Protection Agency, State of Indiana, Suffolk County (N.Y.) Environmental Control Commission; approximately one hundred inquiries from members of the United States Congress; and several hundred private citizens and interested individuals.

Each of the comments received was reviewed and analyzed carefully. The following is a summary of the significant comments and the Agency's response to those comments.

(1) It was suggested that the definition of a feedlot and certain synonyms or common designations describing various types of livestock operations be clarified as to the specific nature of crop growth in a non-feedlot condition and specific operations covered.

The proposed definition of a feedlot provided that if crop production could be or was sustained in the area where livestock were housed or penned, the livestock holding area would not constitute a feedlot. The definition in the final regulation has been modified to show that if either crop or forage growth or production is sustained, the operation would not constitute a feedlot. Therefore, when conditions exist where the density of livestock in any given area precluded the growth or production of crops or forage, and the other elements of the definition were met, those condi-

tions would describe a feedlot. Substantial numbers of operations which may constitute a feedlot in the strict sense, particularly smaller facilities, may consider management options which dispersed or decentralized livestock in order to provide crop or forage growth. Under the latter circumstances the combined effect of soil and vegetative assimilation of manure and the lower rate of manure deposition per unit area could reasonably be expected to preclude any significant pollution problem.

Certain generic words or descriptive terminology such as "dry lot", "hard" surface, or others frequently used to designate livestock operations but not included in the proposed regulation have been incorporated in the final regulation.

(2) Comments and suggestions were made regarding the differences between, and impact of, chronic rainfall upon any runoff control facility. The primary point was that a series of rainfall events with or without coincident snowmelt were the major cause of a discharge and that controlling a given storm event would not necessarily preclude a discharge from chronic precipitation even if all possible means of prevention were used.

Several suggestions were that it was inappropriate for the regulations to refer only to controlling discharges from a given storm event, in that a series of rainfall events or snowmelt were the major causes of discharges from feedlots.

These comments are generally valid to the extent that chronic rainfall or snowmelt are the primary cause of discharges in many areas. The final regulations make it clear that exceptions to the "no discharge" standard are not limited to those occasioned by a given storm event, but include discharges attributable to the cumulative effect of rainfall or snowmelt over a period of time.

(3) A number of comments requested clarification of whether the proposed regulation prescribed performance standards or design criteria to the extent that it contained exceptions for excessive rainfall.

The exceptions in §§ 412.12(b), 412.13(b), 412.15(b) and 412.23(b) provided recognition of the fact that the basic technology for preventing discharges from feedlots requires containment facilities. Containment facilities have physical limitations on their capacity to compensate for unusual rainfall, resulting in occasional unavoidable overflows.

It is not the intent of EPA in this regulation to establish a design standard for control facilities for feedlots. The regulation promulgated below is a performance standard of "no discharge" subject to an exception for discharges attributable to unusual rainfall events. There are numerous types of control facilities which can be utilized to qualify for the exception (e.g., impoundment ponds, diversion ditches, terraces etc.) and operators have broad flexibility to select their control facility in the light of local hydrologic data, soil conditions, weather conditions, waste utilization plans and other information.

Similarly, EPA does not intend to establish operating criteria for feedlot waste control facilities. Rather, this regulation establishes a performance standard with an exception and, to qualify for this exception, the operator is free to choose any method of operation, providing the method of operation causes the facility to contain process generated waste waters and usual rainfall events. Such methods may normally include removal of the stored waste waters for purposes of irrigation or other land utilization of the waste in accordance with accepted agricultural practices which prevent discharge to navigable waters, and maintain the facility in a state of availability to contain runoff from recurring or subsequent rainfalls.

(4) The point was made that the 25 year, 24 hour storm requirement as a basis for the limitation under best available technology was unnecessary and unwarranted.

The technology is the same for controlling precipitation runoff, regardless of the nature of the precipitation period. In the feedlots industry, a variable degree of effluent control is already manifest. Whereas several States and areas have implemented controls on the basis of a 10 year, 24 hour storm, many areas already require or recommend somewhat higher control levels: For example a 25 year, 24 hour storm or long-term (60 days or more) precipitation and runoff storage serve as the basic control requirement in many areas. The increased control requirements are found in arid or semi arid areas such as the State of Texas and in humid areas such as the States of Minnesota, Illinois, and Indiana. In some instances where the 10 year storm criteria prevails, site conditions or management decisions impact upon higher degree of control (for example, the desire to minimize impoundment dewatering requirements by increasing design capacities).

As a result, it is clear that the higher control requirements are in place, available and economically achievable for the feedlots industry. Furthermore, existing facilities will generally be able to expand present waste water control systems in the future to account for increased control levels without undue difficulty.

(5) The vast majority of comments and subsequent discussions within the agency centered on the issue that small farms, which included small feedlots, should be excluded from the requirements of the proposed regulation.

From available information, there is substantial evidence that large feedlots can institute process waste water controls relating to the runoff from a 10 year, 24 hour storm and other process discharges such as the flushing of pens or manure pits without any undue economic hardship. For the present, the thrust of the final regulations is therefore directed at those operations as large or larger than the specified sizes, i.e., 1000 beef cattle, 2500 swine, 700 dairy cattle, and others as indicated. With respect to operations smaller than these,

the Agency is now reviewing a substantial amount of information submitted during the public comment period to ascertain detailed economic impact information and possible further segmentation of the industry on the basis of size. Subsequent to the completion of this analysis, effluent limitations applicable to smaller operations will be proposed for public comment.

(6) It was suggested that dewatering periods (or frequency for emptying impoundments or other storage facilities) be specifically indicated with regard to runoff control.

As is discussed in the Development Document, the variability in state and local requirements, individual site conditions, and choice of runoff control procedures make detailed specification of dewatering requirements untenable. In addition to problems of reliability in predicting the probability of a discharge, with or without any assumption on dewatering, the fact is that runoff controls may be overdesigned to preclude all but the most infrequent dewatering activities. On the other hand, dewatering of runoff control impoundments can often be successfully related to crop or soil moisture needs and not on the sole basis of keeping the impoundment "pumped down" or empty purely for pollution control. However, as is discussed in comment (3), any process waste water control facility is to be operated in a manner to help assure that discharges from recurring runoff are minimized. The conditions and management options for any given site must be used to ascertain whether the chosen runoff controls are "small" with frequent dewatering; "large" with infrequent or no dewatering; require an emergency pump-out capability or other option. Assigning specific dewatering requirements unnecessarily and often incorrectly restricts the flexibility required to properly control runoff for the vast variety of sites which exist throughout the country.

(7) The point was raised that so-called "order-buyer" operations (which involve short term holding of feeder cattle for subsequent transfer to long term feeding at feedlots) auction yards, stockyards or related facilities were not specifically covered by the regulation.

Within the definition of a feedlot in the proposed regulation and final regulation, criteria such as concentration of animals, crop or forage growth or production being sustained, and feeding at the place of confinement (no time frame is stipulated) are clearly satisfied by the types of operations in question. For the most part these operations are open lots or partially covered lots which often handle a mixture of animal types; consequently, they may be affected by either the size requirements for individual animal types or the combination criteria stipulated in the final regulation.

(8) Suggestions with respect to the duck growing subcategories related to the proposed regulation requiring operations to achieve zero discharge by 1983 and the propriety of meeting this requirement or

even achieving zero discharge (subject to the storm overflow exemptions discussed in comment (2) above) as early as 1977.

As is discussed in the Development Document and the preamble to the proposed regulations, the duck growing subcategories are already accomplishing rather successful effluent control using biological treatment. The treatment systems are used primarily for the "wet" lot operations, but "dry" lots also use treatment. The latter type of production facility generally utilizes water only for drinking and thus eliminates swimming areas (wet lots) from the production process. Nevertheless, the drinking water is usually contaminated to some degree and treatment is required. For the dry lot operations, only one is known to achieve no discharge (using irrigation) and one is planning to install a similar system soon. As a consequence, best practicable technology may be defined only on the basis of the efficient biological treatment systems. Also, the process changes required to shift from wet lot to dry lot operations fall only within the scope of best available technology for existing sources and best available demonstrated technology for new sources. Therefore, in the opinion of EPA, the proposed regulations for duck operations were defined appropriately from the available data and these regulations are set forth in final form.

(b) Revision of the proposed regulation prior to promulgation.

As a result of public comments and continuing review and evaluation of the proposed regulations by the EPA, the following changes have been made in the regulation.

(1) The applicability of limitations for existing sources and standards of performance for new sources for Subpart A, § 412.10 has been clarified to reflect that specific sizes of operations for each animal type are affected by the limitations: (as large or larger than) 1000 slaughter steers and heifers, 700 mature dairy cattle; 2500 swine; and other sizes as defined.

(2) The applicability of limitations for existing sources and standards of performance for new sources for Subpart B, § 412.20 has been clarified to reflect applicability to the duck subcategories of sizes of 5000 or more ducks.

(3) The definition of a feedlot in Subparts A and B has been slightly amplified to recognize that either crop or forage growth or production are to be sustained in an area of confined or concentrated animal housing if that area is not to be classified as a feedlot.

(4) Several specialized definitions common to both Subparts A and B, §§ 412.11 and 412.21 respectively, have been clarified, and changed or have been added to help explain the meaning and intent of the limitations.

Definitions for "process waste water" and certain subcategory designations have been modified; definitions for "process generated waste water" and "10 year, 24 hour or 25 year, 24 hour" rainfall events have been added.

(5) Even though the specific reference to rainfall event (whether 10 year, 24 hour or 25 year, 24 hour) has not been changed, the language of the limitations for existing sources and standards of performance for new sources has been substantially rewritten to show that (1) the expected level of performance is no discharge of process waste water pollutants to navigable waters, and (2) the overflow from those systems caused by excessive chronic or catastrophic precipitation may be discharged without regard to pollutants in, or volume of, the overflow.

(6) Section 304(b)(1)(B) of the Act provides for "guidelines" to implement the uniform national standards of section 301(b)(1)(A). Thus Congress recognized that some flexibility was necessary in order to take into account the complexity of the industrial world with respect to the practicability of pollution control technology. In conformity with the Congressional intent and in recognition of the possible failure of these regulations to account for all factors bearing on the practicability of control technology, it was concluded that some provision was needed to authorize flexibility in the strict application of the limitations contained in the regulation where required by special circumstances applicable to individual dischargers. Accordingly, a provision allowing flexibility in the application of the limitations representing best practicable control technology currently available has been added to each subpart, to account for special circumstances that may not have been adequately accounted for when these regulations were developed.

(c) Economic impact.

Even though the proposed regulations affected all sizes of operations, the above listed changes will not significantly affect the conclusions of the economic study of the proposed regulations. The larger feedlots to which the final regulations apply are the least impacted segment regarding costs of treatment alternatives described in the Development Document and the proposed regulations. With respect to operations of smaller capacities than stipulated in the regulation, data submitted during the comment period is being incorporated into further analyses of economic impact of the limitations upon these sizes. Pending results of these analyses, effluent limitations affecting smaller operations will be proposed for public comment at a later date.

(d) Cost-benefit analysis.

The detrimental effects of the constituents of waste waters now discharged by point sources within the feedlots point source category are discussed in Section VI of the report entitled "Development Document for Effluent Limitations Guidelines for the Feedlots Point Source Category" (January 1974). It is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of these pollutants to our Nation's waterways. Nevertheless, as indicated in section VI, the pollutants discharged have substantial and damaging impacts on the quality

of water and therefore on its capacity to support healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

The total cost of implementing the effluent limitations guidelines includes the direct capital and operating costs of the pollution control technology employed to achieve compliance and the indirect economic and environmental costs identified in section VIII and in the supplementary report entitled "Economic Analysis of Proposed Effluent Guidelines FEEDLOTS INDUSTRY" (August 1973). Implementing the effluent limitations guidelines will substantially reduce the environmental harm which would otherwise be attributable to the continued discharge of polluted waste waters from existing and newly constructed facilities in the feedlots industry. The Agency believes that the benefits of thus reducing the pollutants discharged justify the associated costs which, though substantial in absolute terms, represent a relatively small percentage of the total capital investment in the industry.

(e) Publication of information on processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants.

In conformance with the requirements of Section 304(c), a manual entitled, "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category," has been published and is available for purchase from the Government Printing Office, Washington, D.C. 20401 for a nominal fee.

(f) Final rulemaking.

In consideration of the foregoing, 40 CFR Chapter I, Subchapter N is hereby amended by adding a new Part 412, Feedlots Point Source Category, to read as set forth below. This final regulation is promulgated as set forth below and shall be effective April 15, 1974.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Subpart A—All Subcategories Except Ducks

- Sec.
- 412.10 Applicability; description of all subcategories except ducks.
 - 412.11 Specialized definitions.
 - 412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
 - 412.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
 - 412.14 Reserved.
 - 412.15 Standards of performance for new sources.
 - 412.16 Pretreatment standards for new sources.

Subpart B—Ducks Subcategory

- Sec.
- 412.20 Applicability; description of the duck subcategory.
 - 412.21 Specialized definitions.

- Sec.
- 412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
 - 412.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
 - 412.24 Reserved.
 - 412.25 Standards of performance for new sources.
 - 412.26 Pretreatment standards for new sources.

Subpart A—All Subcategories Except Ducks

§ 412.10 Applicability; description of all subcategories except ducks.

The provisions of this subpart are applicable to discharges of pollutants resulting from feedlots in the following subcategories: Beef cattle—open lots; beef cattle—housed lots; dairy cattle—stall barn (with milk room); dairy—free stall barn (with milking center); dairy—cowyards (with milking center); swine—open dirt or pasture lots; swine—housed, slotted floor; swine—solid concrete floor, open or housed lot; sheep—open lots; sheep—housed lots; horses—stables (race tracks); chickens—broilers, housed; chickens—layers (egg production), housed; chickens—layer breeding or replacement stock; housed; turkeys—open lots; turkeys—housed; and for those feedlot operations within these subcategories as large or larger than the capacities given below:

1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine weighing over 55 pounds; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

§ 412.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "feedlot" shall mean a concentrated, confined animal or poultry growing operation for meat, milk or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

(c) The term "process waste water" shall mean any process generated waste water and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).

(d) The term "process generated waste water" shall mean water directly or indirectly used in the operation of a feedlot for any or all of the following: Spillage or overflow from animal or poultry

watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

(e) The terms "10 year, 24 hour rainfall event" and "25 year, 24 hour rainfall event" shall mean a rainfall event with a probable recurrence interval of once in ten years or twenty-five years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

(f) The term "open lot" shall mean pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for possible small portions affording some protection by windbreaks, small shed-type shade areas. For the purposes hereof the term "open lot" is synonymous with the terms "cowyard" (dairy cattle), "pasture lot" (swine), and "dirt lot" (swine, sheep or turkeys), "dry lot" (swine, cattle, sheep, or turkeys) which are terms widely used in the industry.

(g) The term "housed lot" shall mean totally roofed buildings which may be open or completely enclosed on the sides wherein animals or poultry are housed over solid concrete or dirt floors, slotted (partially open) floors over pits or manure collection areas in pens, stalls or cages, with or without bedding materials and mechanical ventilation. For the purposes hereof, the term "housed lot" is synonymous with the terms "slotted floor" buildings (swine, beef), "barn" (dairy cattle) or "stable" (horses), "houses" (turkeys, chickens), which are terms widely used in the industry.

(h) The term "stall barn" shall mean specialized facilities wherein producing cows and replacement cows are milked and fed in a fixed location.

(i) The term "free stall barn" shall mean specialized facilities wherein producing cows are permitted free movement between resting and feeding areas.

(j) The term "milkroom" shall mean milk storage and cooling rooms normally used for stall barn dairies.

(k) The term "milking center" shall mean a separate milking area with storage and cooling facilities adjacent to a free stall barn or cowyard dairy operation.

§ 412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry sub-

categorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharge effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 10 year, 24 hour rainfall event for the location of the point source.

§ 412.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either

chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.14 [Reserved]

§ 412.15 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a source subject to the provisions of this subpart: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.16 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within all subcategories except ducks which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 412.15; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart B—Ducks Subcategory

§ 412.20 Applicability; description of the ducks subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from feedlots for the following subcategories: ducks—dry lot; ducks—wet lot; and for those feedlot operations within these subcategories as large or larger than the capacities given below:

5,000 ducks

§ 412.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

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(b) The term "feedlot" shall mean a concentrated, confined animal or poultry growing operation for meat, milk or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage production or growth is not sustained in the area of confinement.

(c) The term "process waste water" shall mean any process generated waste water and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or poultry or direct products (e.g. milk, eggs).

(d) The term "process generated waste water" shall mean water directly or indirectly used in the operation of a feedlot for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

(e) The terms "10 year, 24 hour rainfall event" and "25 year, 24 hour rainfall event" shall mean a rainfall event with a probable recurrence interval of once in ten years or twenty-five years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

(f) The term "dry lot" shall mean a confinement facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(g) The term "wet lot" shall mean a confinement facility for raising ducks which is open to the environment with a small portion of shelter area, and with open water runs and swimming areas to which ducks have free access.

§ 412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person

may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/1,000 ducks)		
BOD ₅	1.66	0.91
Fecal coliform..	Not to exceed mpn of 400/100 ml at any time.	

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
English units (lb/1,000 ducks)		
BOD ₅	3.66	2.00
Fecal coliform..	See above (not typically expressed in English units).	

§ 412.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant prop-

erties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.24 [Reserved]

§ 412.25 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.26 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the ducks subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 412.15; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standard providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

[FR Doc.74-3502 Filed 2-13-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 412]

APPLICATION OF EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES TO PRETREATMENT STANDARDS FOR INCOMPATIBLE POLLUTANTS FOR THE FEEDLOTS POINT SOURCE CATEGORY

Notice of Proposed Rulemaking

Notice is hereby given pursuant to sections 301, 304 and 309(b) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 and 1317(b); 86 Stat. 816 et seq.; Pub. L. 92-500, that the proposed regulation set forth below concerns the application of effluent limitations guidelines for existing sources to pretreatment standards for incompatible pollutants. The proposal will amend 40 CFR Part 412—Feedlots Point Source Category, establishing for each subcategory therein the extent of application of effluent limitations guidelines to existing sources which discharge to publicly owned treatment works. The regulation is intended to be complementary to the general regulation for pretreatment standards set forth at 40 CFR Part 128. The general regulation was proposed July 19, 1973 (38 FR 19236), and published in final form on November 8, 1973 (38 FR 30982).

The proposed regulation is also intended to supplement a final regulation being simultaneously promulgated by the Environmental Protection Agency (EPA or Agency) which provides effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within all subcategories except ducks and the ducks subcategory of the feedlots point source category. The latter regulation applies to the portion of a discharge which is directed to the navigable waters. The regulation proposed below applies to users of publicly owned treatment works which fall within the description of the point source category to which the guidelines and standards (40 CFR Part 412) promulgated simultaneously apply. However, the proposed regulation applies to the introduction of incompatible pollutants which are directed into a publicly owned treatment works, rather than to discharges of pollutants to navigable waters.

The general pretreatment standard divides pollutants discharged by users of publicly owned treatment works into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not subject to pretreatment standards. (See 40 CFR 128.110 (State or local law) and 40 CFR 128.131 (Prohibited wastes) for requirements which may be applicable to compatible pollutants.) Incompatible pollutants are subject to pretreatment standards as provided in 40 CFR 128.133, which provides as follows:

"In addition to the prohibitions set forth in Section 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a

major contributing industry not subject to Section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guidelines defining best practicable control technology currently available pursuant to Sections 301 (b) and 304(b) of the Act; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further that when the effluent limitations guidelines for each industry is promulgated, a separate provision will be proposed concerning the application of such guidelines to pretreatment." (Italics added).

The regulation proposed below is intended to implement that portion of § 128.133, above, requiring that a separate provision be made stating the application to pretreatment standards of effluent limitations guidelines based upon best practicable control technology currently available.

Questions were raised during the public comment period on the proposed general pretreatment standard (40 CFR Part 128) about the propriety of applying a standard based upon best practicable control technology currently available to all plants subject to pretreatment standards. In general, EPA believes the analysis supporting the effluent limitations guidelines is adequate to make a determination regarding the application of those standards to users of publicly owned treatment works. However, to ensure that those standards are appropriate in all cases, EPA now seeks additional comments focusing upon the application of effluent limitations guidelines to users of publicly owned treatment works.

Sections 412.15 and 412.26 of the proposed regulation for point sources within all subcategories except ducks and ducks subcategory (September 1973; 38 FR 24467), contained the proposed pretreatment standard for new sources. The regulation promulgated simultaneously herewith contains §§ 412.16 and 412.26 which state the applicability of standards of performance for purposes of pretreatment standard for new sources.

A preliminary Development Document was made available to the public at approximately the time of publication of the notice of proposed rulemaking and the final Development Document is now being published. The economic analysis report was made available at the time of proposal. Copies of the final Development Document and economic analysis report will continue to be maintained for inspection and copying during the comment period at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, SW, Washington, D.C. Copies will also be available for inspection at EPA regional offices and at State water pollution control agency offices. Copies of the Development Document may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis report

will be available for purchase through the National Technical Information Service, Springfield, Virginia 22151.

On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973, and which either prescribe national standards of environmental quality or require national emission, effluent or performance standards or limitations.

The Agency determined to implement these procedures in order to insure that the public was provided with background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major environmental effects of a proposed action, to discuss the pertinent nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however, that where such publication is impracticable because of the length of these materials, the material may be made available in an alternate format.

The Development Document referred to above contains information available to the Agency concerning the major environmental effects of the regulation proposed below. The information includes: (1) The identification of pollutants present in waste waters resulting from the production of livestock and direct products such as milk and eggs, the characteristics of these pollutants, and the degree of pollutant reduction obtainable through implementation of the proposed standard; and (2) the anticipated effects on other aspects of the environment (including air, subsurface waters, solid waste disposal and land use, and noise) of the treatment technologies available to meet the standard proposed.

The Development Document and the economic analysis report referred to above also contain information available to the Agency regarding the estimated cost and energy consumption implications of those treatment technologies and the potential effects of those costs on the price and production of livestock and direct products. The two reports exceed, in the aggregate, 100 pages in length and contain a substantial number of charts, diagrams and tables. It is clearly impracticable to publish the material contained in these documents in the FEDERAL REGISTER. To the extent possible, significant aspects of the material have been presented in summary form in the preamble to the proposed regulation containing effluent

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limitations guidelines, new source performance standards and pretreatment standards for new sources within the feedlots point source category (38 FR 24487; September 7, 1973). Additional discussion is contained in the analysis of public comments on the proposed regulation and the Agency's response to those comments. This discussion appears in the preamble to the promulgated regulation (40 CFR Part 412) which currently is being published in the rules and regulations section of the *FEDERAL REGISTER*.

The options available to the Agency in establishing the level of pollutant reduction obtainable through the best practicable control technology currently available, and the reasons for the particular level of reduction selected are discussed in the documents described above. In applying the effluent limitations guidelines to pretreatment standards for the introduction of incompatible pollutants into municipal systems by existing sources in all subcategories except ducks and the ducks subcategory, the Agency has, essentially, three options. The first is to declare that the guidelines do not apply. The second is to apply the guidelines unchanged. The third is to modify the guidelines to reflect: (1) Differences between direct dischargers and plants utilizing municipal systems which affect the practicability of the latter employing the technology available to achieve the effluent limitations guidelines; or (2) characteristics of the relevant pollutants which require higher levels of reduction (or permit less stringent levels) in order to insure that the pollutants do not interfere with the treatment works or pass through them untreated.

As described in the Development Document, the process waste waters from all subcategories except ducks contain solids, organic materials and nutrients. In rare instances, feedlot operations in these subcategories such as milk or egg producers, or stockyards, may be so located as to have a storm runoff discharge or a discharge from livestock watering systems to publicly owned treatment works. Such

discharges may be expected to contain high concentrations of the above pollutants in the runoff and low concentrations in discharges from watering systems. In the opinion of the EPA, suitable design and capacity can be provided for the treatment works to account for the intermittent concentrated storm discharges or continuous low concentration livestock drinking water overflows. Accordingly, the first option should be applicable and the guidelines would not apply to operations in all subcategories except ducks which discharge to publicly owned treatment works.

This first option should also apply to operations in the ducks subcategories. While these operations contain solids, organic materials and nutrients, information described in the Development Document shows that the concentration of the pollutants is relatively low and the discharge is considerably diluted in duck growing processes (swimming areas). Very low concentrations may be encountered if drinking water systems provide the only discharge. In both instances, the pollutants are amenable to treatment in publicly owned treatment works and should therefore be discharged to such works without requirements for pretreatment.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing pretreatment standards for existing sources, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies

the detailed requirements of sections 301, 304 and 307(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

In consideration of the foregoing, it is hereby proposed that 40 CFR Part 412 be amended to add §§ 412.14 and 412.24. All comments received on or before March 18, 1974 will be considered.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

40 CFR Part 412 is proposed to be amended as follows:

Subpart A is amended by adding

§ 412.14 as follows:

§ 412.14 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 412.12 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart B is amended by adding § 412.24 as follows:

§ 412.24 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 412.22 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

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PART III



ENVIRONMENTAL PROTECTION AGENCY

■

GLASS MANUFACTURING POINT SOURCE CATEGORIES

Effluent Guidelines and Standards

Title 40—Protection of the Environment
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND
STANDARDS

PART 426—GLASS MANUFACTURING
POINT SOURCE CATEGORY

Effluent Limitations Guidelines

On October 17, 1973 notice was published in the *FEDERAL REGISTER*, (38 FR 28902) that the Environmental Protection Agency (EPA or Agency) was proposing effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering and automotive glass laminating subcategories of the glass manufacturing category of point sources. The purpose of this notice is to establish final effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources in the glass manufacturing category of point sources, by amending 40 CFR Chapter I, Subchapter N, Part 426 to add new subparts B, C, D, E, F and G. This final rulemaking is promulgated pursuant to sections 301, 304 (b) and (c), 306 (b) and (c) and 307 (c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317 (c); 86 Stat. 816 et seq.; Pub. L. 92-500. Regulations regarding cooling water intake structures for all categories of point sources under section 316(b) of the Act will be promulgated in 40 CFR Part 402.

In addition, the EPA is simultaneously proposing a separate provision which appears in the proposed rules section of the *FEDERAL REGISTER*, stating the application of the limitations and standards set forth below to users of publicly owned treatment works which are subject to pretreatment standards under section 307(b) of the Act. The basis of that proposed regulation is set forth in the associated notice of proposed rulemaking.

The legal basis, methodology and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the notice of public review procedures published August 6, 1973 (38 FR 21202) and in the notice of proposed rulemaking for the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering and automotive glass laminating subcategories. In addition, the regulations as proposed were supported by two other documents: (1) the document entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the FLAT GLASS Segment of the Glass Manufacturing Point Source Category" (October 1973) and (2) the document entitled "Economic Analysis of Proposed Effluent Guidelines, FLAT GLASS INDUSTRY" (August 1973). Both of these

documents were made available to the public and circulated to interested persons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of publication. Prior public participation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties was described in the preamble to the proposed regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

(a) Summary of comments.

The following responded to the request for comments which was made in the preamble to the proposed regulation: PPG Industries, Inc.; U.S. Water Resources Council; County Sanitation Districts of Los Angeles County; Ford Motor Company; Libbey-Owens-Ford Company; Colorado Department of Natural Resources; and U.S. Department of Health, Education, and Welfare.

Each of the comments received was carefully reviewed and analyzed. The following is a summary of the significant comments and EPA's response to those comments.

(1) Comments were received questioning the applicability of diatomaceous earth filters for suspended solids and oil removal as best available technology. Claims were made that this treatment device is untested and unproven in the subcategories covered, and that the estimated effluent concentrations of less than 5 mg/l are overly optimistic.

EPA has found many applications of this filtration device in other industries and also in a few cases in the glass industry. Sufficient data exists on the operation of diatomaceous earth filters to show that such a device can routinely achieve less than 5 mg/l of suspended solids and oil. In the glass container industry a diatomaceous earth filter is being used at one plant to remove machine oil, and emulsified cutting oils similar to those used in the flat glass industry. Also, it has recently come to light that one plant producing windshields has installed a diatomaceous earth filter on its lamination wash water systems on a pilot basis.

EPA, therefore, finds that the "best available" limitations on the automotive glass tempering and automotive glass laminating subcategories are reasonable and justified based on the proven technology.

(2) Comments have been received that the no discharge limitation for float glass cannot be accomplished for two reasons: (1) No additional water can be added to the batch make-up as suggested by EPA, and (2) a number of factors mitigate against the disposal of float wash water to cooling towers. EPA has not included limitations of noncontact cooling water, either for once-through cooling water, or for cooling tower blowdown from recycled systems. If float wash water is added to

cooling water systems, the pollutants will be eventually discharged to the environment untreated. The first objection was based on the fact that soda ash is in short supply and liquid caustic must be substituted. All the water needed for dust suppression is thus supplied by the liquid caustic. Moreover, the suggestion by EPA that dry caustic could be substituted is not practical because it would present severe handling and storage problems.

EPA has confirmed the accuracy of these statements. The recommended recycle of wash water to cooling towers would not be appropriate because effluent limitations have not yet been developed for noncontact cooling water. EPA has also determined that the use of dry caustic to allow recycle of waste water to the batch make-up does present the problems mentioned above. Therefore, a new limitation for the float glass subcategory representing the best available technology economically achievable has been established. These limitations can be attained by the use of diatomaceous earth filters as described in the Development Document.

(3) A question was raised in the comment period about the setting of a COD limitation on plate glass manufacturing. The Development Document stated that data on COD was insufficient to determine an accurate COD loading for a typical plant.

The statement above is only correct as it applies to data on the raw waste load. Industry-supplied data, verified by EPA's contractor, was sufficient to establish a COD effluent loading. However, further consideration of the COD limitation by EPA has determined that the removal of suspended solids is sufficient to control wastes from the plate process. The source of COD in plate waste water is the polishing operation and can be attributed to the organic fibers from the polishing pads. No other significant source is known. Since the treatment technology is designed to control suspended solids, these organic fibers should be removed to the same high level as inorganic suspended solids. The new regulations, therefore, do not contain a COD limitation, for the plate glass subcategory.

(4) Commenters were concerned that the limitations would be interpreted as absolute values without consideration of pollutants in incoming waters.

There is evidence to show that COD and BOD₅ values of intake waters are significant when compared to the allowable effluent loadings in the proposed effluent limitations for some parameters. Moreover, in the case of the float glass, automotive glass tempering, and automotive glass laminating subcategories, the COD and BOD₅ parameters can be attributed to the oil present as described in the Development Document.

EPA has decided that with the concentrations of organics normally present in intake waters, plants would find difficulty in meeting the absolute limitations for BOD₅ and COD. Since the organics are essentially oil, the BOD₅ and COD

limitations have been dropped from the proposed limitations for the flat glass industry.

(5) The comments above also apply to the phosphorus limitations in the float glass and automotive glass subcategories. Phosphorus limitations will be difficult to meet if the numbers are considered absolute values and not net over incoming waters.

EPA has decided that the phosphorus limitations for float glass should be retained. These limitations make allowance for phosphorus present in incoming waters and analytical error. During the course of the guidelines development EPA determined that the use of phosphate based detergents was not necessary in float glass washing. The present limitation, therefore, can be met if such detergents are not used.

In the automotive glass lamination subcategory, EPA recognizes that the low concentration of phosphate required by the proposed limitations would be difficult for a plant to achieve if the intake waters are not taken into account. Therefore, an additional allowance has been made in the best practicable and best available limitations to account for any background phosphate. This allowance is approximately 0.5 mg/l for a typical plant.

(6) Comments were received that claimed that an API separator on the rinse water in the laminating subcategory was insufficient to remove oil.

EPA found in the study of the industry that API separators can indeed reach the levels required by the "best practicable" limitations. Difficulties can arise where excess water is used in the rinse operations. However, with the recommended hot water pre-rinse which is totally recycled, water usage will be minimized and the required oil levels achieved in the effluent.

(7) Commentors pointed out that the term "oil" needs a more specific and common definition, and that a previous test procedure published in the FEDERAL REGISTER (38 FR 28758, October 16, 1973) used freon to extract oil from a sample.

To clarify this issue, this promulgated regulation refers to the above FEDERAL REGISTER document and the definition of oil contained therein.

(8) Other comments pointed out that the limitations would require a typical plant to reduce its oil to 5 mg/l in the effluent. It was pointed out that the present analytical method is only accurate to 10 mg/l.

EPA finds the comments to be valid. The limitations in this document have been raised where necessary to an effluent loading that would represent 10 mg/l for a typical plant flow.

(b) Revision of the proposed regulations prior to promulgation.

As a result of public comments, continuing review and evaluation of the proposed regulation by EPA, the following changes have been made in the regulation.

(1) Sections 426.21, 426.31, 426.41, 426.51, 426.61 and 426.71 entitled "Spe-

cialized Definitions," now include references to general definitions, abbreviations, and methods of analysis in 40 CFR Part 401 which reduce the need for some specialized definitions in this regulation.

(2) An important change was made in the "best available" limitations for the float glass subcategory. The proposed no discharge limitation has been changed to permit a discharge. The pollutant levels, however, were determined to be less than that allowed by the "best practicable" limitations, and are attainable by the application of the best available technology economically achievable, use of diatomaceous earth filter.

Originally, EPA was of the opinion that the relatively clean float wash water could be entirely recycled to the batch make-up for dust suppression and to the cooling towers as make-up water. Comments submitted to EPA have shown that in many cases this waste water can not be recycled for sound technical reasons. EPA also reconsidered the recommended recycle of wash water to cooling towers because effluent limitations have not yet been developed for non-contact cooling water and it would not be appropriate to dispose of float wash water in the cooling water system before such limitations are established.

(3) In the plate glass subcategory, the COD limitations have been eliminated but the limitations on TSS remain. EPA has determined that the technology for controlling TSS is more than adequate to control the waste water discharge from the plate process. The COD is contributed by the organic fibers in the polishing pads. These fibers are measured in the TSS analysis, and, therefore, little benefit is to be derived from the setting of a separate COD limitation. As mentioned previously, there is also some question about the lack of COD data in the raw waste from the plate process which further supports the decision to remove COD from the list of effluent limitations for the plate glass subcategory.

(4) The BOD5 and COD limitations in the float glass, automotive glass tempering and automotive glass laminating subcategories have been eliminated. This was done for two reasons: (1) The limitations do not give any credit for these pollutant parameters in incoming waters. These pollutants are frequently present in intake water concentrations equal to the proposed limitations and could preclude many plants from meeting the limitations. (2) The BOD5 and COD added by the process is almost entirely oil. The oil limitations in these regulations are sufficient to control this pollutant with proper monitoring.

(5) In the automotive glass laminating subcategory, the phosphorus limitations have been raised to allow for phosphate in intake waters. The low effluent concentrations required by the proposed limitations would be difficult to meet if applied on an absolute basis. The allowable effluent concentrations for a typical plant were thus raised from 5.6 to 6.1 mg/l for the "best practicable" limita-

tions and from 1.0 to 1.5 mg/l for the "best available" limitations.

(6) Valid questions were raised during the comment period about the limits of detection for oil. The proposed limitations were based on a concentration of 5 mg/l for a typical plant. Comments have shown that 10 mg/l of oil is the enforceable limit and the limitations in each of the subcategories containing oil as a parameter (float glass manufacturing, automotive glass tempering and automotive glass laminating) have been raised to reflect this consideration.

(7) Section 304(b)(1)(B) of the Act provides for "guidelines" to implement the uniform national standards of Section 301(b)(1)(A). Thus Congress recognized that some flexibility was necessary in order to take into account the complexity of the industrial world with respect to the practicability of pollution control technology. In conformity with the Congressional intent and in recognition of the possible failure of these regulations to account for all factors bearing on the practicability of control technology, it was concluded that some provision was needed to authorize flexibility in the strict application of the limitations contained in the regulation where required by special circumstances applicable to individual dischargers. Accordingly, a provision allowing flexibility in the application of the limitations representing best practicable control technology currently available has been added to each subpart, to account for special circumstances that may not have been adequately accounted for when these regulations were developed.

(c) Economic impact.

The changes to the regulations will not affect the results of the economic analysis prepared for the proposed regulation.

(d) Cost-benefit analysis.

The detrimental effects of the constituents of waste water now discharged by point sources within the flat glass segment of the glass manufacturing point source category are discussed in Section VI of the report entitled "Development Document for Effluent Limitations Guidelines for the FLAT GLASS Segment Manufacturing Point Source Category" (February, 1974). It is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of these pollutants to our Nation's waterways. Nevertheless, as indicated in Section VI, the pollutants discharged have substantial and damaging impacts on the quality of water and therefore on its capacity to support healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

The total cost of implementing the effluent limitations guidelines includes the direct capital and operating costs of the pollution control technology employed to achieve compliance and the indirect economic and environmental costs identified in Section VIII and in the supplementary report entitled "Economic

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Analysis of Proposed Effluent Guidelines, FLAT GLASS INDUSTRY" (September, 1973). Implementing the effluent limitations guidelines will substantially reduce the environmental harm which would otherwise be attributable to the continued discharge of polluted waste waters from existing and newly constructed plants in the flat glass industry. The Agency believes that the benefits of thus reducing the pollutants discharged justify the associated costs which, though substantial in absolute terms, represent a relatively small percentage of the total capital investment in the industry.

(e) Publication of information on processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants.

In conformance with the requirements of section 304(c) of the Act, a manual entitled, "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the FLAT GLASS Segment of the Glass Manufacturing Point Source Category," has been published and is available for purchase from the Government Printing Office, Washington, D.C. 20401 for a nominal fee.

(f) Final rulemaking.

In consideration of the foregoing, 40 CFR Chapter I, Subchapter N, Part 426 is hereby amended by adding Subparts B through G to read as set forth below. This final regulation is promulgated as set forth below and shall be effective April 15, 1974.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Subpart B—Sheet Glass Manufacturing Subcategory

- Sec.
426.20 Applicability; description of the sheet glass manufacturing subcategory.
426.21 Specialized definitions.
426.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.24 Reserved.
426.25 Standards of performance for new sources.
426.26 Pretreatment standards for new sources.

Subpart C—Rolled Glass Manufacturing Subcategory

- 426.30 Applicability; description of the rolled glass manufacturing subcategory.
426.31 Specialized definitions.
426.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

- Sec.
426.34 Reserved.
426.35 Standards of performance for new sources.
426.36 Pretreatment standards for new sources.

Subpart D—Plate Glass Manufacturing Subcategory

- 426.40 Applicability; description of the plate glass manufacturing subcategory.
426.41 Specialized definitions.
426.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.44 Reserved.
426.45 Standards of performance for new sources.
426.46 Pretreatment standards for new sources.

Subpart E—Float Glass Manufacturing Subcategory

- 426.50 Applicability; description of the float glass manufacturing subcategory.
426.51 Specialized definitions.
426.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.54 Reserved.
426.55 Standards of performance for new sources.
426.56 Pretreatment standards for new sources.

Subpart F—Automotive Glass Tempering Subcategory

- 426.60 Applicability; description of the automotive glass tempering subcategory.
426.61 Specialized definitions.
426.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.64 Reserved.
426.65 Standards of performance for new sources.
426.66 Pretreatment standards for new sources.

Subpart G—Automotive Glass Laminating Subcategory

- 426.70 Applicability; description of the automotive glass laminating subcategory.
426.71 Specialized definitions.
426.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

- Sec.
426.74 Reserved.
426.75 Standards of performance for new sources.
426.76 Pretreatment standards for new sources.

Subpart H—Sheet Glass Manufacturing Subcategory

- § 426.20 Applicability; description of the sheet glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullet and other ingredients) are mixed, melted in a furnace, and drawn vertically from a melting tank to form sheet glass.

§ 426.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "cullet" shall mean any broken glass generated in the manufacturing process.

§ 426.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove

such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.24 [Reserved]

§ 426.25 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a new source subject to the provisions of this subpart: There shall be no discharge of process waste water pollutants to navigable waters.

§ 426.26 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the sheet glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.25; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant.

Subpart C—Rolled Glass Manufacturing Subcategory

§ 426.30 Applicability; description of the rolled glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several

mineral ingredients (sand, soda ash, limestone, dolomite, cullet, and other ingredients) are mixed, melted in a furnace, and cooled by rollers to form rolled glass.

§ 426.31 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "cullet" shall mean any broken glass generated in the manufacturing process.

§ 426.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

§ 426.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.34 [Reserved]

§ 426.35 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a new source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.36 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the rolled glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.25; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart D—Plate Glass Manufacturing Subcategory

§ 426.40 Applicability; description of the plate glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullet and other ingredients) are melted in a furnace, pressed between rollers, and finally ground and polished to form plate glass.

§ 426.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

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(b) The term "cullet" shall mean any broken glass generated in the manufacturing process.

§ 426.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategory and effluent levels established. It is, however, possible that data which would effect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for the facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/kg of product)		
TSS	2.76	1.38
pH	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS	5.52	2.76
pH	Within the range 6.0 to 9.0.	

§ 426.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/kg of product)		
TSS.....	0.045	0.045
pH.....	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS.....	0.090	0.090
pH.....	Within the range 6.0 to 9.0.	

§ 426.44 [Reserved]

§ 426.45 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a new source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.46 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the plate glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.45; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant.

Subpart E—Float Glass Manufacturing Subcategory

§ 426.50 Applicability; description of the float glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants re-

sulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullet, and other ingredients) are mixed, melted in a furnace, and floated on a molten tin bath to produce float glass.

§ 426.51 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 426.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategory and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent limitations		
Effluent characteristics	Maximum for any day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/kg of product)		
TSS.....	2.00	2.00
Oil.....	1.40	1.40
Phosphorus.....	.05	.05
pH.....	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS.....	0.0040	0.0040
Oil.....	.0028	.0028
Phosphorus.....	.0001	.0001
pH.....	Within the range 6.0 to 9.0.	

§ 426.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent limitations		
Effluent characteristic	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/kg of product)		
TSS.....	0.70	0.70
Oil.....	1.40	1.40
Phosphorus.....	.05	.05
pH.....	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS.....	0.0014	0.0014
Oil.....	.0028	.0028
Phosphorus.....	.0001	.0001
pH.....	Within the range 6.0 to 9.0.	

§ 426.54 [Reserved]

§ 426.55 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent Limitations		
Effluent characteristic	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/kg of product)		
TSS.....	0.70	0.70
Oil.....	1.40	1.40
Phosphorus.....	.05	.05
pH.....	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS.....	0.0014	0.0014
Oil.....	.0028	.0028
Phosphorus.....	.0001	.0001
pH.....	Within the range 6.0 to 9.0.	

§ 426.56 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the float glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.55 provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart F—Automotive Glass Tempering Subcategory

§ 426.60 Applicability; description of the automotive glass tempering subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the processes in which glass is cut and then passed through a series of processes that grind and polish the edges, bend the glass, and then temper the glass to produce side and back windows for automobiles.

§ 426.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "tempering" shall mean the process whereby glass is heated near the melting point and then rapidly cooled to increase its mechanical and thermal endurance.

§ 426.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitation set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategory and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue

NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent Limitations		
Effluent characteristic	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/sq m of product)		
TSS.....	1.95	1.22
Oil.....	.64	.64
pH.....	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS.....	0.40	0.25
Oil.....	.13	.13
pH.....	Within the range 6.0 to 9.0.	

§ 426.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent limitations		
Effluent characteristic	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/sq m of product)		
TSS.....	0.24	0.24
Oil.....	.40	.40
pH.....	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS.....	0.05	0.05
Oil.....	.10	.10
pH.....	Within the range 6.0 to 9.0.	

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§ 426.64 [Reserved]

§ 426.65 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/sq m of product)		
TSS.....	0.24	0.24
Oil.....	.49	.49
pH.....	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS.....	0.05	0.05
Oil.....	.10	.10
pH.....	Within the range 6.0 to 9.0.	

§ 426.66 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the automotive glass tempering subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.65; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart G—Automotive Glass Laminating Subcategory

§ 426.70 Applicability; description of the automotive glass laminating subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the processes which laminate a plastic sheet between two layers of glass, and which prepare the glass for lamination such as cutting, bending and washing, to produce automobile windshields.

§ 426.71 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 426.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit which are more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (q/sq m of product)		
TSS.....	4.40	4.40
Oil.....	1.76	1.76
Phosphorus.....	1.07	1.07
pH.....	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS.....	0.90	0.90
Oil.....	.36	.36
Phosphorus.....	.22	.22
pH.....	Within the range 6.0 to 9.0.	

§ 426.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/sq m of products)		
TSS.....	0.88	0.88
Oil.....	1.76	1.76
Phosphorus.....	.30	.30
pH.....	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS.....	0.18	0.18
Oil.....	.36	.36
Phosphorus.....	.06	.06
pH.....	Within the range 6.0 to 9.0.	

§ 426.74 [Reserved]

§ 426.75 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new point source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days shall not exceed
Metric units (g/sq m of product)		
TSS.....	0.88	0.88
Oil.....	1.76	1.76
Phosphorus.....	.30	.30
pH.....	Within the range 6.0 to 9.0.	
English units (lb/1,000 lb of product)		
TSS.....	0.18	0.18
Oil.....	.36	.36
Phosphorus.....	.06	.06
pH.....	Within the range 6.0 to 9.0.	

§ 426.76 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the automotive glass laminating subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard

for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.75; provided that, if the publicly owned treatment works which

receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the

case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant.

[FR Doc.74-3500 Filed 2-13-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 426]

APPLICATION OF EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES TO PRETREATMENT STANDARDS FOR INCOMPATIBLE POLLUTANTS FOR THE GLASS MANUFACTURING POINT SOURCE CATEGORY

Notice of Proposed Rulemaking

Notice is hereby given pursuant to sections 301, 304 and 307(b) of the Federal Water Pollution Control Act, as amended (the Act) 33 U.S.C. 1251, 1311, 1314 and 1317(b); 86 Stat. 816 et seq.; Pub. L. 92-500, that the proposed regulation set forth below concerns the application of effluent limitations guidelines for existing sources to pretreatment standards for incompatible pollutants. The proposal will amend 40 CFR Part 426—Glass Manufacturing Point Source Category, establishing for subparts B through G therein the extent of application of effluent limitations guidelines to existing sources which discharge to publicly owned treatment works. The regulation is intended to be complementary to the general regulation for pretreatment standards set forth at 40 CFR Part 128. The general regulation was proposed July 19, 1973 (38 FR 19236), and published in final form on November 8, 1973 (38 FR 30982).

The proposed regulation is also intended to supplement a final regulation being simultaneously promulgated by the Environmental Protection Agency (EPA or Agency) which provides effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering and automotive glass laminating subcategories of the glass manufacturing point source category. The latter regulation applies to the portion of a discharge which is directed to the navigable waters. The regulation proposed below applies to users of publicly owned treatment works which fall within the description of the point source category to which the guidelines and standards (40 CFR Part 426) promulgated simultaneously apply. However, the proposed regulation applies to the introduction of incompatible pollutants which are directed into a publicly owned treatment works, rather than to discharges of pollutants to navigable waters.

The general pretreatment standard divides pollutants discharged by users of publicly owned treatment works into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not subject to pretreatment standards. (See 40 CFR 128.110 (State or local law) and 40 CFR 128.131 (Prohibited wastes) for requirements which may be applicable to compatible pollutants). Incompatible pollutants are subject to pretreatment standards as

provided in 40 CFR 128.133, which provides as follows:

"In addition to the prohibitions set forth in Section 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry not subject to Section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guidelines defining best practicable control technology currently available pursuant to Sections 301(b) and 304(b) of the Act; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further that *when the effluent limitations guidelines for each industry are promulgated, a separate provision will be proposed concerning the application of such guidelines to pretreatment.*" (Italics added.)

The regulation proposed below is intended to implement that portion of section 128.133, above, requiring that a separate provision be made stating the application to pretreatment standards of effluent limitations guidelines based upon best practicable control technology currently available.

Questions were raised during the public comment period on the proposed general pretreatment standard (40 CFR Part 128) about the propriety of applying a standard based upon best practicable control technology currently available to all plants subject to pretreatment standards. In general, EPA believes the analysis supporting the effluent limitations guidelines is adequate to make a determination regarding the application of those standards to users of publicly owned treatment works. However, to ensure that those standards are appropriate in all cases, EPA now seeks additional comments focusing upon the application of effluent limitations guidelines to users of publicly owned treatment works.

Sections 426.15, 426.25, 426.35, 426.45, 426.55, and 426.65 of the proposed regulation for point sources within the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering, and automotive glass laminating subcategories (October 1973; 38 FR 28902), contained the proposed pretreatment standard for new sources. The regulation promulgated simultaneously herewith contains §§ 426.26, 426.36, 426.46, 426.56, 426.66, and 426.76 which state the applicability of standards of performance for purposes of pretreatment standard for new sources.

A preliminary Development Document was made available to the public at approximately the time of publication of the notice of proposed rulemaking and the final Development Document entitled "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the FLAT GLASS Segment of the Glass Manufacturing Point Source Category" is now being published. The economic analysis

report entitled "Economic Analysis of Proposed Effluent Guidelines, FLAT GLASS INDUSTRY" (September, 1973), was made available at the time of proposal. Copies of the final Development Document and economic analysis report will continue to be maintained for inspection and copying during the comment period at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street SW., Washington, D.C. Copies will also be available for inspection at EPA regional offices and at State water pollution control agency offices. Copies of the Development Document may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis report will be available for purchase through the National Technical Information Service, Springfield, Virginia 22151.

On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973, and which either prescribe national standards of environmental quality or require national emission, effluent or performance standards or limitations.

The Agency determined to implement these procedures in order to insure that the public was provided with background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major environmental effects of a proposed action, to discuss the pertinent nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however, that where such publication is impracticable because of the length of these materials, the material may be made available in an alternate format.

The Development Document referred to above contains information available to the Agency concerning the major environmental effects of the regulation proposed below. The information includes: (1) The identification of pollutants present in waste waters resulting from the manufacture of flat glass, and automotive glass, the characteristics of these pollutants, and the degree of pollutant reduction obtainable through implementation of the proposed standard; and (2) the anticipated effects on other aspects of the environment (including air, subsurface waters, solid waste disposal and land use, and noise) of the treatment technologies available to meet the standard proposed.

The Development Document and the economic analysis report referred to above also contain information available

to the Agency regarding the estimated cost and energy consumption implications of those treatment technologies and the potential effects of those costs on the price and production of flat glass and automotive glass. The two reports exceed, in the aggregate, 100 pages in length and contain a substantial number of charts, diagrams and tables. It is clearly impracticable to publish the material contained in these documents in the *FEDERAL REGISTER*. To the extent possible, significant aspects of the material have been presented in summary form in the preamble to the proposed regulation containing effluent limitations guidelines, new source performance standards and pretreatment standards for new sources within the Glass category (38 FR 28902; October 17, 1973). Additional discussion is contained in the analysis of public comments on the proposed regulation and the Agency's response to those comments. This discussion appears in the preamble to the promulgated regulation (40 CFR Part 426) which currently is being published in the rules and regulations section of the *FEDERAL REGISTER*.

The options available to the Agency in establishing the level of pollutant reduction obtainable through the best practicable control technology currently available, and the reasons for the particular level of reduction selected are discussed in the documents described above. In applying the effluent limitations guidelines to pretreatment standards for the introduction of incompatible pollutants into municipal systems by existing sources in the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering, and automotive glass laminating subcategories, the Agency has, essentially, three options. The first is to declare that the guidelines do not apply. The second is to apply the guidelines unchanged. The third is to modify the guidelines to reflect: (1) Differences between direct dischargers and plants utilizing municipal systems which affect the practicability of the latter employing the technology available to achieve the effluent limitations guidelines; or (2) characteristics of the relevant pollutants which require higher levels of reduction (or permit less stringent levels) in order to insure that the pollutants do not interfere with the treatment works or pass through them untreated.

Most of the subcategories of the flat glass segment of the glass manufacturing point source category produce waste waters containing pollutants compatible with publicly owned treatment works. The only exception is the automotive laminating subcategory which produces a waste water with a high concentration of oil as reported in the Development Document. The raw waste water from the laminating process typically contains 1700 mg/l of oil. The regulation proposed below requires the treatment of this waste to the levels attainable by the application of the best practicable control technology currently available. This is justifi-

fied on the basis of the known detrimental effect on high concentrations of oil on biological treatment systems, and the inability of such systems to adequately remove oil.

The other subcategories either produce no waste waters, as is the case with the rolled glass and sheet glass subcategories, or produce waste waters containing pollutants at sufficiently low concentrations so as not to interfere with the operation of publicly owned treatment works, pass through such works untreated or inadequately treated, or otherwise be incompatible with such treatment works. This is the case with the plate glass, float glass, and automotive glass tempering subcategories.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing pretreatment standards for existing sources, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304 and 307(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The EPA information regulation, 40 CFR 2, provides that a reasonable fee may be charged for copying.

In consideration of the foregoing, it is hereby proposed that 40 CFR Part 426 be amended to add §§ 426.24, 426.34, 426.44, 426.54, 426.64, and 426.74.

All comments received on or before March 18, 1974 will be considered.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Part 426 is proposed to be amended as follows:

Subpart B is amended by adding § 426.24 as follows:

§ 426.24 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.22 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart C is amended by adding § 426.34 as follows:

§ 426.34 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.32 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart D is amended by adding § 426.44 as follows:

§ 426.44 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.42 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart E is amended by adding § 426.54 as follows:

§ 426.54 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.52 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart F is amended by adding § 426.64 as follows:

§ 426.64 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.62 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart G is amended by adding § 426.74 as follows:

§ 426.74 Pretreatment Standards for Existing Sources.

For the purposes of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines for oil set forth in 40 CFR 426.72 above shall apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may not be introduced into a publicly owned treatment works, except in compliance with such limitations.

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PART IV



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Office of Low Rent Public
Housing**

■

**HOUSING ASSISTANCE
PAYMENTS PROGRAM—
SUBSTANTIAL REHABILITATION**

Proposed Rules

PROPOSED RULES

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

Office of Low Rent Public Housing

[24 CFR Part 1276]

[Docket No. R-74-251]

SECTION 23 HOUSING ASSISTANCE PAY-
MENTS PROGRAM—SUBSTANTIAL RE-
HABILITATION

Notice of Proposed Rulemaking

Notice is hereby given that the Department of Housing and Urban Development proposes to amend 24 CFR Chapter VIII by adding a new Part 1276. The proposed amendment sets forth the essential elements of the section 23 Housing Assistance Payments Program—Substantial Rehabilitation and includes, among other things, the roles and responsibilities of the Department, the local housing authority, the rehabilitator or owner, and the eligible low-income family; the steps in applying for the section 23 Housing Assistance Payments Program; the basis for determining the amount of housing assistance payments; and the prescribed forms of contracts, lease provisions and other documents.

Interested parties are invited to submit written comments, suggestions and objections regarding the proposed amendment by March 20, 1974, addressed to the Rules Docket Clerk, Office of the General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All relevant material will be considered before adoption of a final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

It is therefore proposed to amend Title 24 by adding Part 1276 as set forth below.

PART 1276—SECTION 23 HOUSING AS-
SISTANCE PAYMENTS PROGRAM—
SUBSTANTIAL REHABILITATIONSubpart A—Applicability, Scope, and Basic
Policies

- Sec.
1276.1 Applicability and scope.
1276.2 Definitions.
1276.3 Basic policies.
1276.4 Separate project requirements.
1276.5 Allowance for preliminary costs of administration and for security and utility deposits.

Subpart B—Project Developments

- 1276.101 Preapplication.
1276.102 LHA submission of application.
1276.103 HUD review and approval of application.
1276.104 Invitation for proposals.
1276.105 Submission of proposals.
1276.106 Proposal contents.
1276.107 Site and neighborhood standards.
1276.108 Evaluation of proposals.
1276.109 Notification of selection.
1276.110 Execution of annual contributions contract and agreement.
1276.111 Agreement to enter into housing assistance payments contract.
1276.112 Completion of rehabilitation.
1276.113 HUD review of contract compliance.

APPENDICES

- I. Notification of Selection.
II. Annual Contributions Contract.

III. Agreement to Enter Into Housing Assistance Payments Contract.

IV. Housing Assistance Payments Contract.

V. Certificate of Family Eligibility. Attachment 1—Lease Provisions Required for Participation in the Housing Assistance Payments Program.

VI. Owner's Offer to Lease Dwelling Unit.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1410(b)); sec. 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1421(b)).

Subpart A—Applicability, Scope, and Basic
Policies

§ 1276.1 Applicability and scope.

(a) The policies and procedures contained herein are applicable to the making of housing assistance payments on behalf of eligible low-income families leasing housing which has been substantially rehabilitated pursuant to the provisions of section 23 of the U.S. Housing Act of 1937.

(b) For the purposes of this Part, "substantially rehabilitated housing" shall mean existing housing for which, prior to the start of rehabilitation: (1) An Annual Contributions Contract is executed between the Department of Housing and Urban Development (HUD) and the local housing authority (LHA); and (2) an Agreement to Enter Into Housing Assistance Payments Contract ("Agreement") is executed between the LHA and the owner. Unless specific approval is obtained from HUD, the policies and procedures contained herein shall apply to all projects of leased existing housing with substantial rehabilitation for which agreements to lease have not yet been entered into. With respect to projects for which agreements to lease have been entered into prior to the effective date of this Part, HUD may apply these standards to the extent it determines it is practicable to do so.

(c) This Part (1) covers policies and procedures relating to the roles and responsibilities of HUD, the LHA and the owner; the application process; the project development format; the determination of the amount of annual contributions; and HUD processing procedures; and (2) contains prescribed contracts, agreements, and other documents.

§ 1276.2 Definitions.

(a) *Decent, Safe, and Sanitary Housing.* For the purposes of this program, housing is considered to be decent, safe, and sanitary if a certificate of occupancy or other certification, as required by law, has been issued by the authorized governmental official as to compliance with all applicable codes and ordinances, and if the following minimum standards are met:

(1) The housing has been determined by the LHA to be decent, safe, and sanitary within the meaning of the U.S. Housing Act based upon all pertinent factors, including, but not limited to, the following:

(i) The condition of the exterior and interior of the structure and the housing unit;

(ii) Adequacy and operating condition of sanitary facilities, which must be private, and adequacy of solid and liquid waste disposal facilities;

(iii) Adequacy and operating condition of kitchen facilities, which must (A) contain a range and refrigerator (except in localities where it is normal practice that tenants provide these items), a sink, space for storage of food and for storage of utensils and dishes, and (B) be private except where authorized as congregate housing meeting the HUD requirements for such housing.

(iv) Adequacy and operating condition of heating, lighting and ventilating equipment and/or facilities;

(v) Size, number of rooms, and furnishability to accommodate adequately the size and type of family to be housed.

(2) The owner shall provide either (i) a certification from the authorized local government official or a qualified laboratory that exposed interior and exterior surfaces are free of lead based paint hazards, or (ii) a certification by the owner that these surfaces have been adequately treated or covered, all in accordance with the applicable HUD regulations issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 USC 4801.

(3) The location shall meet the site and neighborhood standards set forth in § 1276.107.

(b) *Substantial Rehabilitation.* A property will be considered substantially rehabilitated when its condition is improved from a substantially substandard condition to a decent, safe, and sanitary condition, which, with normal maintenance and repair, will remain in such condition at least 5 years. Substantially substandard condition means that the housing, while structurally sound, is not only below decent, safe, and sanitary condition, but also has one or more critical defects, or a combination of potential defects in sufficient number or extent to require considerable repair or rebuilding. The defects are either so critical or so widespread that the structures should be extensively repaired. Such defects may include, but not be limited to: holes or open cracks, rotted, deteriorated, loose, or missing material over a large area of the outside walls, roof, chimney, inside walls, floors, or ceilings; substantial sagging of floors, walls, or roof; extensive damage by storm, fire, or flood; inadequate or potentially hazardous utility systems and equipment; and lack of hot or cold running water, flush toilet, or tub or shower.

(c) *Fair Market Rent and Gross Rent.* The fair market rent for substantially rehabilitated housing shall be equal to the gross rent (including utilities, ranges and refrigerators, and all maintenance and management services) for dwelling units of varying size (number of bedrooms) and structure type, which is determined at least annually by HUD as the fair market rent for newly constructed rental housing of modest (non-luxury) nature in the housing market area. Gross rent includes all utilities (except telephone) whether or not paid

directly to the utility company by the family.

(d) *Gross Family Contribution.* The portion of the rent to owner payable by a family plus the allowance established by the LHA for any utilities (except telephone) payable directly by the family.

(e) *Annual Contributions Contract.* A written agreement between HUD and an LHA to provide annual contributions to the LHA for participation in the Housing Assistance Payments Program. (See Appendix II.)

(f) *Agreement to Enter into Housing Assistance Payments Contract ("Agreement").* A written agreement between an LHA and an owner that upon satisfactory completion of substantial rehabilitation of the housing by the owner pursuant to agreed upon plans, specifications and other requirements as set forth in the Agreement, the LHA will enter into a Housing Assistance Payments Contract with the owner. (See Appendix III.)

(g) *Housing Assistance Payments Contract ("Contract").* A HUD-approved written Contract between the LHA and an owner for the purpose of providing housing assistance payments on behalf of eligible families. (See Appendix IV.)

(h) *Eligible Families.* Those families determined by the LHA to meet the requirements for admission into, and continued occupancy of, housing assisted hereunder.

(i) *Certificate of Family Eligibility.* The certificate issued by an LHA to an applicant family declaring it to be eligible and stating the terms and conditions of such eligibility. (See Appendix V.)

(j) *Owner's Offer to Lease Dwelling Unit.* A written offer by an owner to lease a dwelling unit to an eligible family under the Housing Assistance Payments Program. (See Appendix VI.)

(k) *Lease.* An LHA-approved written agreement between a private owner and an eligible family for the leasing of an existing, decent, safe, and sanitary dwelling unit. The lease shall contain the provisions specified in the Contract.

§ 1276.3 Basic policies.

(a) *Limitation on Use of Substantially Rehabilitated Housing.* Substantial rehabilitation projects shall be permitted:

(1) In those localities where HUD determines that there is not, and there is not likely soon to be, an adequate supply of existing housing not requiring rehabilitation which, with housing assistance payments, can meet the housing needs of low-income families, or (2) in certain areas in which the proposed rehabilitation is required and such projects are specifically approved by HUD in accordance with priorities established from time to time by the Secretary.

(b) *Development Process.* Under the Section 23 substantial rehabilitation program, any person or entity who owns or has evidence of control of housing ("owner") which may be made suitable for occupancy by eligible families through substantial rehabilitation, may submit a proposal to provide housing opportunities for low-income families in

such housing. A proposal shall be responsive to an invitation for proposals published by the LHA. If the proposal is acceptable to HUD and the LHA, the LHA will send the owner a Notification of Selection (see Appendix I) and enter into an Agreement with him.

(c) *Annual Contributions.* The maximum total annual contribution that may be contracted for in the Annual Contributions Contract for a project shall be: (1) The total of the HUD-approved maximum rents to owner plus an allowance for the cost of utilities payable directly by families (see paragraph (e) of this section) for all the units in the project plus (2) An allowance for the cost of administration. The allowance for the preliminary costs of administration and for security and utility deposits (see § 1276.5) shall be payable out of this total.

(d) *Housing Assistance Payments.* (1) The housing assistance payments will pay the owner the difference between the rent chargeable by the owner as specified in the Contract and that portion of said rent payable by the family. Families shall not be eligible for such Federal financial assistance when the LHA determines that 25 percent of adjusted family income equals or exceeds the gross rent for the unit leased.

(2) Housing assistance payments shall be paid to owners only for those units under lease by eligible families. If a family vacates its unit in violation of the provisions of its lease, the owner may continue to receive housing assistance payments with respect to such unit in accordance with the terms of the Contract, not beyond the termination of the lease (in accordance with its terms), but only if the owner (i) has promptly (within 30 days) notified the LHA of the vacancy and (ii) has not rejected, except for good cause acceptable to the LHA, any substitute family provided by the LHA.

(e) *Maximum Rents to Owners.* The rents to owners that may be contracted for pursuant to the HUD-approved Housing Assistance Payments Contract ("Contract") between the LHA and the owner shall not exceed the HUD-established fair market rents for newly constructed rental housing for the locality or localities in which the units are located, less any allowance for utilities payable directly by families. These fair market rents may be exceeded by up to 10 percent in establishing the initial Contract rents for a project if HUD determines that higher rents are justified and necessary.

(f) *Term of Housing Assistance Payments Contract.* The LHA and owner may enter into a Contract for a maximum initial term of five years, with an option in the owner to renew for an additional term(s) of not more than five years each, *Provided*, That the total Contract term, including renewals, shall not exceed fifteen years. However, the LHA may notify the owner that it will not agree to renew if it determines that the

owner is in default under the terms of the Contract.

(g) *Rent Adjustments.* The payment of increased housing assistance payments as a result of rent adjustments under this paragraph shall be subject to the provisions contained in paragraph (g) (3) of this section.

(1) *Automatic Annual Adjustments.* (i) The monthly rents to the owner as set forth in the Contract shall be adjusted automatically on the date of execution of this Contract and on each annual anniversary date of the Contract. The adjustment(s) shall be based upon the HUD-determined adjustment factor, as defined in paragraph (g) (1) (ii) of this section.

(ii) The adjustment factor shall be the HUD-determined percentage change in the fair market rent for existing housing for the market area in which the project is located.

(iii) The amount of each automatic annual adjustment shall be computed by applying the adjustment factor in effect at the time of the adjustment (provided that the adjustment factor determination is not more than one year old) to the latest rents shown in the Contract.

(iv) In no case may an annual adjustment result in Contract rents which, together with any allowance for utilities payable directly by families, would exceed the fair market rents in effect for the market area at the time of adjustment. For the first four annual adjustments the fair market rents shall be those which apply to newly constructed housing plus the percentage, if any, by which the original Schedule "A" Contract rents exceeded the then applicable fair market rents as approved pursuant to paragraph (e) of this section. For all subsequent adjustments, the fair market rents shall be those which apply to existing housing.

(v) Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the original rents set forth in the Contract.

(2) *Renegotiations.* The rents contained in the Contract may be renegotiated to become effective at the beginning of the sixth and eleventh years of the Contract (if the Contract is renewed for that length of time), whether or not such effective date of renegotiation coincides with the beginning of a renewal term. However, such renegotiations may not result in rents in excess of the fair market rents for existing housing for the housing market area in effect at the time of renegotiation.

(3) *Limitation.* The LHA will make housing assistance payments in increased amounts commensurate with upward rent adjustments under this paragraph, but only to the extent possible within the limits of the maximum total amount of annual contributions payable under the Annual Contributions Contract in respect to the project. No commitment is made by the LHA or HUD that the maximum total amount of annual contributions payable in respect to the project, as

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specified in the Annual Contributions Contract, will be increased by reason of any such rent adjustments. Accordingly, to enable the owner to receive sufficient income from rents, the owner shall have the right to select, and the LHA shall be obligated to approve as promptly as possible, families whose average rent payments will result in receipts commensurate with the adjusted rents.

(h) *Eligible Agencies.* (1) All legally constituted local housing authorities created pursuant to State housing authorities laws are eligible to participate in this program. In addition, under the terms of the U.S. Housing Act, a "public housing agency" may include any State, county, municipality or other governmental entity or public body which is authorized by State law to engage in the development or administration of low-income housing or slum clearance and may, therefore, be eligible to participate in this program. The abbreviations "LHA" or "LHAs" as used herein include any governmental entity or public body as described in this paragraph.

(2) LHAs may, by agreement, cooperate with each other in carrying out their respective functions, and State laws typically provide that a locality which has no LHA can invite another LHA within the State to function within its borders. In addition to the few states that have created statewide LHAs, many more have state departments or agencies authorized to administer housing and urban development legislation which qualifies them as public housing agencies under the U.S. Housing Act and authorizes them to carry out this function or to act through LHAs or other entities.

(i) *Local Governing Body Approval.* HUD cannot approve an application for a section 23 substantial rehabilitation program unless the governing body of the locality in which the units are to be located has, by resolution, approved the application of the provisions of section 23 to the locality. Once such a resolution has been enacted, it may satisfy this approval requirement for all subsequent section 23 programs. The terms of the resolution as enacted must be examined by the LHA and HUD to determine whether it contains any restrictive language (e.g., limits the number of dwelling units, or limits the program to locations which would have the effect of denying equal housing opportunities) which would require that a new resolution be passed to enable HUD to approve the proposed project.

(j) *Types of Housing to be Substantially Rehabilitated.* Existing structures of various types may be appropriate for this program, including apartment hotels, multifamily projects, row and duplex houses, and free-standing single dwellings. Hotels or office buildings may be suitable for conversion under this program to housing suitable for use as congregate or single-room occupancy (SRO) housing. (See HUD requirements applicable to congregate and SRO housing.) High rise elevator projects for families with children may not be utilized unless

HUD determines that there is no practical alternative. Mobile homes may not be utilized in this program.

(k) *Limitation on Number of Units in Single Structure.* (1) Section 23(c) of the U.S. Housing Act provides that no more than 10 percent of the units in any single structure shall be assisted unless the LHA, because of the limited number of units in the structure or for any other reason, determines that such limit should not be applied. Where the LHA determines that the 10 percent limitation should not be applied, a record of its determination shall be maintained in the LHA's permanent file, and the LHA shall notify HUD of its action.

(2) However, in approving applications for housing assistance payments programs involving multifamily (five or more units) structures, HUD will give priority to those applications which would provide assistance for 20 percent or less of the units in a single multifamily structure or complex.

(l) *Relocation Requirements.* No Agreement shall be executed with respect to occupied units which involve substantial rehabilitation requiring that the units be vacated to accomplish the necessary work unless the owner voluntarily undertakes liability for and provides for the funding of all relocation costs. (See section 6 of the Agreement.)

(m) *Equal Opportunity and Other Requirements.* Participation in the section 23 Housing Assistance Payments Program—Substantial Rehabilitation requires compliance by all participants with (1) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the National Environmental Policies Act; and (2) all rules, regulations, and requirements issued pursuant thereto.

(n) *Methods of Finance.* (1) Projects may be financed by means of a conventional loan from a commercial bank, savings bank, savings and loan association, pension fund, insurance company or other financial institution. Financing by State Housing Finance Agencies and by market rate FHA-insured mortgage loans available for rehabilitation may also be utilized.

(2) Section 167(k) of the Internal Revenue Code provides significant income tax benefits for owners who undertake substantial rehabilitation in connection with low-income rental housing. Under this Section, an owner is permitted to compute depreciation for rehabilitation expenditures incurred in connection with low-income rental housing using a five-year useful life under the straight-line method and disregarding any salvage value. Rehabilitation expenditures must be between \$3,000 and \$15,000 per unit expended over a period of two consecutive years between July 25, 1969, and December 31, 1974.

(o) *Availability of Funds for Security Deposits.* In hardship cases where families are unable to obtain funds from community agencies or other sources for

payment of security deposits to landlords or utility companies (except telephone), the LHA may pay the owner and/or the utility companies the funds necessary in an amount not to exceed one month's rent plus utility deposits (excluding telephone). This amount shall be recovered by the LHA from the family over a one-year period.

(p) *Responsibilities of the Owner.* The owner shall be responsible for the complete and total management, maintenance and operation of the housing. These responsibilities shall include but not be limited to the payment of utilities (unless paid directly by the family), insurance and taxes; performance of all ordinary and extraordinary maintenance; performance of all management functions including the taking of applications and selection of families (with the exception of determination and verification of eligibility for the particular dwelling unit involved, which shall be the function of the LHA); collection of rents; risk of loss from vacancies and nonpayment of rent by tenant families; and preparation and furnishing of information required by the LHA under the Contract. This does not preclude the owner from contracting with the LHA for the management of the project under a separate contract, for a prescribed fee, upon a determination by HUD that such services are not otherwise available in the locality, provided, however, that such contract shall not shift to the LHA any of the owner's responsibilities and obligations. Any such contract shall be approved by HUD.

(q) *Responsibilities of the LHA.* The LHA shall be responsible for review of applications submitted by families to determine eligibility for assistance; determination of amounts of housing assistance payments; issuance of Certificates of Family Eligibility to eligible families and approval of Owners' Offers to Lease Dwelling Units and related leases in accordance with the procedures for such actions contained in Part 1274, Subpart B, section 23 Housing Assistance Payments Program—Existing Housing Handbook; making of housing assistance payments on behalf of eligible families; reexamination of family eligibility as prescribed by HUD regulations; inspections prior to leasing and inspections at least annually to determine that the units are maintained in decent, safe, and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); and authorization of evictions. The LHA may provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination.

(r) *Responsibilities of the Family.* A family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under both the lease with the owner and the Certificate of Family Eligibility issued to it by the LHA.

§ 1276.4 Separate project requirements.

A section 23 substantial rehabilitation project may not include any other type of leasing, shall be processed with a separate Annual Contributions Contract List and a separate Annual Contributions Contract Part I and shall be assigned a separate project number. All section 23 substantial rehabilitation units to be placed under a single Housing Assistance Payments Contract shall comprise a separate project. A single unit under a Housing Assistance Payments Contract shall comprise a separate project. However, HUD may designate as a single project the units to be covered by two or more such Contracts for substantial rehabilitation projects where:

(a) The units are placed under Annual Contributions Contract on the same date; and

(b) Such consolidation is necessary in the interest of administrative efficiency.

§ 1276.5 Allowance for preliminary costs of administration and for security and utility deposits.

An allowance may be provided for preliminary costs of administration incurred by the LHA in conducting surveys, listings and inspections prior to the execution of the Annual Contributions Contract, and for security and utility deposits. An estimate of these costs should be included by the LHA in its first Operating Budget which is to be submitted for approval when the Annual Contributions Contract is executed.

Subpart B—Project Development**§ 1276.101 Preapplication.**

The LHA shall determine whether there is a need for housing assistance for low-income families within its operating jurisdiction. If it determines that there is such a need, the LHA shall survey the housing market of the locality to determine whether there is a sufficient supply of units that are suitable or may be made suitable to meet all or part of this need. In determining the adequacy of the housing supply, the LHA shall estimate realistically the number and size (number of bedrooms) of units that may be available, the condition of such units, and the rents at which the units may be leased. In order to receive approval for a section 23 substantial rehabilitation program, the LHA must demonstrate that the conditions of § 1276.3(a) are met.

§ 1276.102 LHA submission of application.

(a) *Submission of Application.* (1) An application for a section 23 substantial rehabilitation program to be submitted by the LHA to HUD shall be in a form prescribed by HUD and shall:

(i) Describe the results of the LHA's survey of the housing market in terms of the number, size (number of bedrooms), condition, and rents of units which may be available;

(ii) Substantiate that there is not, and there is not likely soon to be, an adequate

supply of existing housing not requiring rehabilitation which, with housing assistance payments, can meet the housing needs of low-income families;

(iii) Document the need for housing assistance in terms of family incomes, housing conditions, and rent to income ratios;

(iv) Indicate the number of units, by unit size (number of bedrooms), which are to be leased, including a separate indication of the number of units to be leased by elderly families;

(v) Include an estimate of the cost of administration attributable to the proposed project, and provide a basis for such estimate;

(vi) Provide an estimate of the average gross family contribution to be paid by families (not to exceed 25 percent of estimated adjusted family income);

(vii) Indicate whether the LHA intends to meet the unit limitation described in § 1276.3(k)(2);

(viii) Indicate whether the LHA has adopted and implemented an approved tenant selection and assignment plan in compliance with Title VI of the Civil Rights Act of 1964.

(2) The LHA shall submit an Affirmative Marketing Plan with regard to invitations of applications for and issuance of Certificates of Family Eligibility.

(3) HUD regulation, Project Selection Criteria (§ 200.700 of this title), is not applicable; however, see § 1276.107 for required site and neighborhood standards.

(4) Advice and assistance in the preparation of the application are available from HUD.

(b) *Income Limits and Rent Schedules.* (1) LHAs not having previously approved income limits and rent schedules shall submit income limits and rent schedules, in accordance with HUD requirements for approval with their applications for a substantial rehabilitation project.

(2) It is the incomes from families to be housed under the proposed Housing Assistance Payments Program, not the income limits that is more significant in enabling HUD to determine assistance requirements. The LHA shall, therefore, provide accurate estimates of anticipated family income and achievable per unit rents to be paid by the families expected to be assisted. In making this estimate, the LHA shall utilize such information as incomes, after deductions and exemptions, of families on updated, current waiting lists, and rents being paid by tenants in other leased and non-leased units operated by the LHA, as well as incomes of families expected to be housed under the income limits established for the Housing Assistance Payments Program.

§ 1276.103 HUD Review and Approval of Application.

(a) *Review of Application.* HUD shall review the application to determine that: there is need for assistance for the number of units applied for; the necessary conditions for approval of a substantial rehabilitation program are met; the esti-

mate of the cost of administration is realistic and allowable by HUD; the anticipated average gross family contribution is realistic; and the LHA is in compliance with all Equal Opportunity requirements. If deemed appropriate, HUD shall make adjustments in size of program, bedroom distribution, allowance for the cost of administration, or family contribution. Such adjustments shall be accepted by the LHA in order to receive application approval. Where the LHA is found to be in noncompliance with any Equal Opportunity requirements, appropriate action to effectuate compliance shall be taken. In determining whether or not to approve an application, HUD shall give priority to those applications meeting the unit limitation described in § 1276.3(k)(2).

(b) *Approval or Disapproval of Application.* Upon completion of its review, HUD shall notify the LHA by letter that the application is approved, can be approved if the LHA adopts, within 30 days, the changes required by HUD, or is disapproved. If the application is disapproved, the letter shall indicate in detail the reasons for disapproval. If the application is approved, the letter (in the form prescribed by HUD) shall indicate the amount of annual contributions reserved for the program and instruct the LHA to prepare an invitation for proposals to be submitted to HUD for approval.

§ 1276.104 Invitation for Proposals.

(a) *Contents of Invitation for Proposals.* The invitation for proposals shall:

(1) Include the following information as to the housing required:

(i) The neighborhoods in which proposals for substantially rehabilitated housing will be considered, or the type of location desired with reference to physical environment and accessibility to public and commercial facilities;

(ii) The total number of units, the number of units by bedroom size, and any limitation on the number of units which will be assisted in any single structure;

(iii) The number of units for elderly and non-elderly occupancy;

(iv) Structural type (e.g., elevator, apartment, row house, detached);

(2) Include statements as to:

(i) The necessity to comply with all site selection and neighborhood standards set forth in this Part;

(ii) The fact that management, ordinary and extraordinary maintenance, utilities (except where paid directly by tenants), taxes, and insurance are to be the responsibility of the owner;

(iii) Maximum gross rents (including all utilities, ranges and refrigerators), by number of bedrooms per unit, that the LHA will consider, and a statement to the effect that, if families are to pay directly for some or all utilities, the maximum rents will be adjusted downward by a utility allowance covering such utilities;

(iv) The fact that the LHA shall be responsible only for its portion of the rent payable to the owner and only for

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those units under lease by eligible families.

(v) The fact that detailed guidelines, standards, and procedures are contained in a Rehabilitation Program Packet which may be obtained by interested parties from the LHA;

(vi) The number of copies of the proposal to be submitted to the LHA and HUD;

(vii) The latest date by which proposals must be received by the LHA and HUD and the fact that there exists no obligation to select any of the proposals received.

(b) *Rehabilitation Program Packet.* HUD shall prepare a Packet for use by the LHA containing copies of the following:

(1) The HUD section 23 Substantial Rehabilitation Handbook;

(2) "Minimum Design Standards for Rehabilitation for Residential Properties" (HUD Handbook 4940.4), supplemented, where appropriate, by the Minimum Property Standards (MPS) for Multifamily Housing (FHA 2600), MPS for One and Two Living Units (FHA 300), and MPS for Elderly with Special Consideration for the Handicapped (HUD-PG-66). (These standards specify minimum acceptability and constitute a floor for design and planning. They do not prohibit utilizing higher standards. Proposed rehabilitation should also comply with special requirements due to local climatic, topographic or environmental conditions.);

(3) Where applicable, HUD planning and design criteria for accessibility by the physically handicapped;

(4) Relocation requirements set forth in appropriate HUD issuances;

(5) Equal Opportunity requirements, which include the submission of an Affirmative Marketing Plan, and compliance with Title VI of the Civil Rights Act of 1964 and Executive Order 11063, Title VIII of the Civil Rights Act of 1968, including regulations and guidelines pursuant thereto, and Executive Order 11246;

(6) HUD regulations implementing the requirements of section 3 of the Housing and Urban Development Act of 1968 that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project to be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project. These regulations require submission of an affirmative action plan for utilization of project area businesses;

(7) National Environmental Policy Act requirements as set forth in appropriate HUD issuances;

(8) The prescribed form of Agreement to Enter Into Housing Assistance Payments Contract and the prescribed form of such Contract (see Appendices III and IV, respectively).

(c) *Authorization to Publish.* HUD shall review the invitation to determine that it is consistent with the require-

ments of this part and the information provided by the LHA in its application. After approving the invitation, HUD shall transmit (1) a letter to the LHA indicating approval of the invitation and authorizing its publication immediately upon receipt of such letter, and (2) copies of all HUD standards, regulations and forms which are to be included in Rehabilitation Program Packets.

(d) *Publication of Invitation for Proposals.* The LHA shall publish the invitation for proposals at least weekly for two consecutive weeks in a newspaper of general circulation within the locality. The LHA shall also notify the appropriate business concerns included in HUD's registry of section 3 businesses for the applicable political jurisdiction. To the extent feasible, the LHA should also use other media and publish the invitation in trade association journals and local minority group newspapers.

(e) *Deadline Date for Receipt of Proposals.* The deadline date for receipt of proposals by the LHA shall be no earlier than 28 days after the date of the last publication in the newspaper of general circulation.

(f) *Copies of Published Invitation.* Prior to the deadline date for receipt of proposals, the LHA shall provide HUD with two certified copies of each published invitation and a statement of other publicity methods used. One copy of the invitation shall be available in the LHA's office for public inspection.

(g) *Nondisclosure of Information.* In order to provide all interested parties with an equal opportunity to prepare proposals, the contents of the invitation for proposals shall not be disclosed prior to publication.

§ 1276.105 Submission of Proposals.

(a) Owners shall be required to submit sealed copies of their complete proposals to the LHA, before the published deadline, and simultaneously submit copies to HUD, in the number of copies specified in the invitation for proposals. Proposal documents shall be sealed in an envelope or package which shall be clearly marked with a label contained in the Rehabilitation Program Packet. The label shall be clearly and distinctively marked "Section 23 Housing Assistance Payments Program—Substantial Rehabilitation Proposal." shall show the name of the LHA and project designation, and shall be addressed to the LHA or HUD, respectively. The label on the inner envelope shall be marked "Sealed Proposal—Open on (date and time)."

(b) Submission of proposals shall be by hand delivery or certified mail. Any proposal received by the LHA after the deadline shall not be accepted by the LHA but shall be returned unopened. No proposal shall be opened by the LHA or HUD until after the deadline. To assure that HUD has received copies of all proposals, the LHA shall advise HUD by letter immediately after the deadline for receipt of proposals as to the number of proposals received and the names of the

proposers. This letter shall provide no comments as to evaluation or preference.

§ 1276.106 Proposal Contents.

(a) Each proposal shall include the following:

(1) The number of units, by unit size (number of bedrooms), proposed to be rehabilitated and made available for leasing by eligible families;

(2) The address(es) of the housing proposed to be rehabilitated and photos of exterior(s) and interior(s);

(3) A map showing the location of the housing;

(4) Sketches showing present layout and interior dimensions of the unit or of the different unit sizes, and, if changes are proposed, floor plans showing layout and interior dimensions after rehabilitation;

(5) A description of the rehabilitation proposed, in sufficient detail, including plans, drawings and specifications to the extent necessary, so that a determination can be made by the LHA and HUD that the proposal meets the requirements of the invitation for proposals, including the Rehabilitation Program Packet, and will provide sufficient basis for a subsequent determination by the LHA and HUD that the rehabilitated housing will meet such requirements; and if this requires the services of a registered architect, such architect shall certify that the plans, drawings and specifications will result in rehabilitated housing in conformance with said requirements;

(6) The anticipated date for completion of the rehabilitation;

(7) The gross rents required by unit size, the portion of such rents attributable to each utility, and which utilities, if any, are to be paid directly by the families;

(8) A copy of evidence of ownership or other effective control of the property to be rehabilitated;

(9) A completed HUD environmental information form;

(10) A statement as to whether the proposed project is expected to displace site occupants and, if so, the number of families, individuals, and business concerns to be displaced (identified by race or minority).

(b) In addition, each proposal shall indicate or include:

(1) Who the rehabilitator/prime contractor and the owner (lessor) will be; the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, using prescribed HUD forms;

(2) Evidence of management capability;

(3) That the proposed rehabilitation would be permissible under applicable zoning, building, housing or other codes;

(4) Submission of an Affirmative Marketing Plan, signed assurances of compliance with Title VI of the Civil Rights Act of 1964, Executive Order 11063, and Title VIII of the Civil Rights Act of 1968 and, in bid condition areas, certifications required pursuant to Executive Order 11246;

(5) Submission of an affirmative action plan for utilization of project area businesses pursuant to section 3 of the Housing and Urban Development Act of 1968, and regulations issued pursuant thereto;

(6) A statement that the owner and/or rehabilitator recognizes the relocation requirements that apply if the proposed project will cause displacement and will assume full responsibility for the funding of all costs incurred in providing to displaced persons the full relocation payments and services authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

§ 1276.107 Site and Neighborhood Standards.

(a) Proposed locations for substantially rehabilitated housing must be approved by HUD as meeting the following standards:

(1) The sites and neighborhoods shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (and of Executive Order 11063 with respect to creed), and HUD regulations issued pursuant thereto.

(2) The site shall be free from adverse environmental conditions or, if such conditions exist, there is evidence that they will be corrected by the time of completion of the rehabilitation.

(b) The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized, standard rental housing of similar market rents.

(c) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower income workers, is not excessive.

(d) If the housing to be rehabilitated has occupants, the owner and/or rehabilitator of the housing must voluntarily undertake liability for and provide for the funding of all relocation costs. (See section 6 of the Agreement.)

§ 1276.108 Evaluation of Proposals.

(a) Each proposal received shall be evaluated on the basis of all pertinent factors including, but not limited to: location, potential for rehabilitation, rents to owner, owner and rehabilitator/contractor qualifications, and compliance with Equal Opportunity requirements, requirements for provision of employment and training and business opportunities in the project area, and the National Environmental Policy Act.

(b) HUD will provide the LHA with an analysis of each proposal received which will indicate the proposal or proposals found approvable.

(c) The HUD analysis of all proposals shall be held available for public inspection in the LHA office for at least three

years following the notification of proposal selection.

§ 1276.109 Notification of Selection.

The LHA shall review the HUD analyses, and may only select a proposal or proposals from among those found approvable by HUD. The LHA shall notify the owner(s) of his (their) selection using the prescribed form of letter (Notification of Selection) attached hereto as Appendix I. Upon acceptance of the Notification by the Owner, the LHA shall immediately transmit a copy to HUD together with a copy of the LHA resolution selecting the proposal. If the owner does not accept the Notification by the date specified the LHA may rescind the Notification.

§ 1276.110 Execution of Annual Contributions Contract and Agreement.

After receipt of a copy of the accepted Notification, HUD shall prepare (a) The Annual Contributions Contract which shall conform to the prescribed form shown as Appendix II of this part, and (b) The Agreement, which shall conform to the prescribed form shown as Appendix III of this part. The Annual Contributions Contract shall be transmitted by HUD to the LHA for execution and return to HUD. After receipt of the executed Annual Contributions Contract from the LHA, HUD shall execute it and transmit the Agreement to the LHA for execution by the LHA and the owner. A copy of the executed Agreement shall be sent to HUD by the LHA.

§ 1276.111 Agreement To Enter Into Housing Assistance Payments Contract.

As prescribed in Appendix III, the Agreement shall include, but not be limited to, the following:

(a) A description of the property and the rehabilitation to be accomplished;

(b) An attachment of the proposed Contract, complete in all respects except for execution, which shall specify the amount of rent to owner, and shall conform to the prescribed form shown as Appendix I;

(c) Rehabilitation initiation and completion dates;

(d) How completion of the rehabilitation shall be evidenced (see § 1276.111 (a));

(e) A provision that the owner may not:

(1) Make any sale, assignment, or conveyance or transfer in any other form of his interests in the Agreement except:

(a) With the prior consent of the LHA and HUD; or

(b) To a financial institution for the purpose of obtaining financing;

(2) Change to a different rehabilitator/contractor from the one named in the Agreement without prior consent of the LHA and HUD;

(f) A provision that the owner shall comply with relocation requirements as set forth in applicable HUD issuances, HUD Equal Opportunity (including equal employment opportunity) requirements, and the requirements of section 3

of the Housing and Urban Development Act of 1968 and regulations issued pursuant thereto in regard to providing opportunities for training and employment to lower income residents of the project area and in regard to awarding contracts to business concerns located in, or owned in substantial part by residents of, the project area.

§ 1276.112 Completion of Rehabilitation.

(a) *Evidence of Completion.* Completion of the rehabilitation shall be evidenced by the following, which must be furnished to the LHA:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy;

(2) Separate certifications by a registered architect¹ and the owner that:

(i) There are no defects or deficiencies in the project;

(ii) All work has been completed in accordance with the requirements of the Agreement; and

(iii) The project is in good and tenantable condition.

(b) *HUD Inspection.* (1) The LHA shall notify HUD when the project is completed. Upon receipt of such notification, HUD shall inspect the project and the evidence of completion listed in paragraph (a) of this section. HUD shall make a written determination as to whether or not the project has been satisfactorily completed. If the determination is in the affirmative, HUD will authorize the execution of the Contract. If the LHA or the owner disagrees with the HUD determination, the matter may be appealed to the Secretary of Housing and Urban Development as if it were a dispute under section 9b of the Agreement.

(2) If the owner, after furnishing the LHA with all the items in paragraph (a) of this section, believes that the LHA has unreasonably withheld or delayed notification to HUD of project completion, the owner may make a written request to HUD to determine if the project is completed and take action as provided in paragraph b(1) of this section.

§ 1276.113 HUD Review of Contract Compliance.

No later than six months after execution of the Housing Assistance Payments Contract for the project, HUD shall review project operations to ensure that the owner and the LHA are in full compliance with the terms and conditions of the Contract. Subsequent reviews shall be scheduled as necessary.

APPENDIX I—NOTIFICATION OF SELECTION

Date: _____

Gentlemen: This will notify you of selection of your proposal, dated _____, to provide _____ units of substantially

¹ If working drawings and specifications were prepared and certified to by a registered architect, the same architect shall furnish the certification required in this paragraph.

² Insert total number of units to be substantially rehabilitated.

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ally rehabilitated housing at -----, of which ----- units are to be the subject of a contract by this Authority for the making of housing assistance payments on behalf of eligible low-income families leasing such units. The number, size and rents of units to be contracted for are as follows:

Unit size (number of bedrooms)	Number of units		Rents
	Total	Elderly	

This selection has been approved by the Department of Housing and Urban Development (HUD) and this Authority.

Should you decide to proceed with this undertaking, you will be expected to complete the rehabilitation, in a manner acceptable to this Authority and HUD, in compliance with: (a) The requirements of the invitation for proposals published by this Authority, the Rehabilitation Program Packet, and your proposal; (b) all applicable State and local laws, codes, ordinances, and regulations as modified by any waivers obtained from the appropriate officials; and (c) the appropriate HUD Minimum Property Standards and the applicable HUD planning and design criteria.

If you accept this Notification, an Annual Contributions Contract will be executed by this Authority and HUD. Following such execution, an "Agreement to Enter Into Housing Assistance Payments Contract" (Agreement) will be executed by you and this Authority, which Agreement shall be in accordance with the forms of Agreement attached hereto.

Your acceptance of this Notification constitutes a certification and agreement that there will not be made any assignment, conveyance, or any other form of transfer of the property, or any interest therein, without the prior written consent of the Authority and HUD, except to a financial institution for the purpose of obtaining financing, nor shall an owner and/or rehabilitator other than those named in the proposal be substituted without the written consent of the Authority and HUD.

Please indicate your acceptance of this Notification by signing in the space provided and returning two copies to this office within ten days of the date of this Notification. Failure to submit your acceptance within this time period may result in withdrawal of this Notification.

Yours truly,

By _____
Housing Authority

Accepted: _____

Title _____
Date _____

APPENDIX II—ANNUAL CONTRIBUTIONS CONTRACT

This Contract is entered into as of the _____ day of _____, 19____, by and between

* Insert location of units. If units are to be rehabilitated and leased at more than one location, all such locations should be listed and the units and rent summaries prepared for each such location. If any unit(s) is (are) to be covered by a separate Housing Assistance Payments Contract, such unit(s) and rent summaries with respect thereto, shall be listed separately. (See § 1276.4).

† Insert number of units to be assisted by the LHA on behalf of eligible low-income families occupying such units.

tween the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937 (42 U.S.C. 1401, et seq., which Act is amended to the date of this Contract is herein called the "Act") and the Department of Housing and Urban Development Act (42 U.S.C. 3521), and (herein called the "Local Authority"), which is organized and existing under the laws of the State of _____ and is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 *Project or Projects.* The Local Authority is undertaking to provide decent, safe, and sanitary housing for families of low income (further defined as "Family" or "Families" in section 2.2) in privately owned accommodations pursuant to section 23 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with the persons or entities having the legal right to lease or sublease such housing ("Owners"). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the type of housing and the number and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made, shall constitute a Project hereunder and shall be identified by a stated Project Number.

0.2 *Part I and Part II of this Contract.* (a) Certain provisions of this Contract, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this Contract.

(b) The remaining provisions of this Contract, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this Contract.

0.3 *Fiscal Year.* Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending _____ of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

Local Authority, by:

The Government, by:

PART I

SUBSTANTIAL REHABILITATION PROJECT NO. _____

1.1 *The Project.* The Local Authority proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to substantially rehabilitated dwelling units pursuant to an agreement to enter into such Contract ("Agreement") executed prior to the commencement of such rehabilitation. It is contemplated that the numbers and sizes of units will be as follows:

Size of Unit	Number of Units
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The Local Authority shall, to the maximum extent feasible, enter into an Agreement and Contract in accordance with the numbers and sizes of units specified above, but the Local Authority shall not enter into any Agreement or Contract or take any other action which will result in a claim for a total Annual Contribution in respect to the Proj-

ect in excess of the maximum amount stated in section 1.3(b).

1.2 *Authorization of Actions by Local Authority.*

(a) In order to carry out the Project, the Local Authority is authorized to (i) enter into an Agreement, (ii) enter into a Contract, (iii) make housing assistance payments on behalf of Families, and (iv) take all other necessary actions, all in accordance with the forms, conditions, and requirements prescribed or approved by the Government; Provided, however, that neither the Local Authority nor the Government shall assume any obligation beyond that provided in the Government-prescribed form of Agreement and in the Contract approved by the Government.

(b) The Contract shall bear the written approval of the Government.

(c) The Contract shall be for an initial term of not more than five years with provision for renewal for subsequent terms of not more than five years each, but in no event shall the term of any such Contract exceed 15 years.

(d) The Contract may provide for periodic adjustments in the rents chargeable by the Owner; Provided, however, that any such provision shall specify that such adjustments are subject to the following clause:

Limitation. The LHA will make housing assistance payments in increased amounts commensurate with upward rent adjustments under this Section, but only to the extent possible within the limits of the maximum total amount of Annual Contributions payable under the Annual Contributions Contract in respect to the Project. No commitment is made by the LHA or the Government that the maximum total amount of Annual Contributions payable in respect to the Project, as specified in Part I of said Contract, will be increased by reason of any such rent adjustments. Accordingly, to enable the Owner to receive sufficient income from rents, the Owner shall have the right to select, and the LHA shall be obligated to approve as promptly as possible, Families whose average rent payments will result in receipts commensurate with the adjusted rents.

1.3 *Annual Contributions.* (a) Subject to the maximum dollar limitation in paragraph (b) of this Section and the other provisions of this Contract, the Government shall pay Annual Contributions to the Local Authority in respect to the Project in an amount equal to the sum of the following:

(1) The amount of housing assistance payments payable during the Fiscal Year (see section 1.4) by the Local Authority pursuant to the Contract, as authorized in section 1.2.

(2) The allowance, in the amount approved by the Government for preliminary costs of administration and for security and utility deposits.

(3) The allowance for the cost of administration, in the amount approved by the Government.

(b) Notwithstanding any other provisions of this Contract or any provisions of any other Contract between the Government and the Local Authority, the Government shall not be obligated to make any Annual Contributions or any other payment in respect to the Project in excess of \$-----.

(c) The Government will make periodic payments on account of the Annual Contributions upon requisition therefor by the Local Authority in the form prescribed by the Government. Following the end of each Fiscal Year, the Local Authority shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of periodic payments during the Fiscal Year exceeds the total amount of the Annual Contributions for such Fiscal Year.

computed in accordance with paragraph (a) of this Section.

1.4 **Fiscal Year.** The Fiscal Year for the Project shall be the Fiscal Year established by section 9.3 of this Contract; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the commencement of leasing (i.e., the first day of the month in which the first unit is leased by an eligible family) and ending on the last day of said established Fiscal Year which is not less than 12 months after commencement of such leasing. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution in Section 1.3(b) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 **Term of this Contract.** This Contract shall remain in effect so long as the Housing Payments Contract is in effect; Provided, however, that not more than 15 Annual Contributions shall be payable with respect to the Project.

1.6 **Federal and Local Government Approvals.**

(a) The making of this Contract and the undertaking by the Government of the Annual Contributions as herein provided has been duly approved on List No. _____ for Annual Contributions Contracts.

(b) The Governing Body of the locality in which the dwelling units are to be located has approved the application of Section 23 of the Act to the locality, by resolution or ordinance duly adopted on _____, 19__.

1.7 **Separate Accounts and Records.** The books of account and records of the Local Authority shall be maintained for the Project as separate and distinct from all other Projects and undertakings of the Local Authority.

1.8 **Affirmative Fair Housing Marketing Regulation.** The Local Authority shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation, including the submission for Government approval of an Affirmative Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to such Regulation.

1.9 **Equal Employment Opportunity.** (a) The Local Authority shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Contract, the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Authority setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by

or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Local Authority advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) The Local Authority agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(c) The Local Authority further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted con-

struction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

1.10 **Expeditionary Carrying Out of Project.** The Local Authority shall proceed expeditiously with the Project. If the Local Authority fails to proceed expeditiously, and no Agreement with the Owner has yet been entered into, the Government, by notice to the Local Authority, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the Local Authority or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement.

1.11 **Failure of Local Authority to Comply with Contract.** (a) In the event of failure of the Local Authority to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the Local Authority to enter into such Contract is drawn into question in any legal proceeding, or if the Local Authority asserts or claims that such Contract is not binding upon the Local Authority for any such reason, the occurrence of any such event, if the Owner is not in default, shall constitute a Substantial Default hereunder. In such case, the Government will assume the Local Authority's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the Local Authority, and shall exercise such other powers as the Government may have to cure the Default.

(b) All rights and obligations of the Local Authority assumed by the Government will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Contract will thereafter be administered in accordance with its terms and the terms of this Annual Contributions Contract, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) The provisions of this section 1.11 are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. To enforce the performance of this provision the Owner and such assignees, as well as the Local Authority, shall have the right to proceed against the Government by suit at law or in equity.

PART II

2.1 **Low-Income Housing Use.** The Local Authority shall use the Annual Contributions solely for the purpose of providing decent, safe, and sanitary dwellings for families of low income, hereinafter further defined as "Families."

2.2 **Definitions—(a) Families: Elderly Families; and Displaced Families.**

(1) The term "Families" means families of low income, includes Families consisting of a single person in the case of Elderly Families and Displaced Families, and includes the remaining member of a tenant family.

(2) The term "Elderly Families" means Families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under Title II of the

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Social Security Act (42 U.S.C. 301, et seq.); or are under a disability as defined in section 223 of that Act, or are handicapped within the meaning of section 202 (12 U.S.C. 1701q) of the Housing Act of 1959, as amended.

(3) The term "Displaced Families" means Families displaced by urban renewal or other governmental action, or Families whose present or former dwellings are situated in areas as determined by the Government to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster.

(b) *Project Receipts and Project Expenditures.* (1) "Project Receipts" with respect to each Project shall mean the Annual Contributions payable hereunder and all other receipts, if any, accruing to the Local Authority from, out of, or in connection with such Project.

(2) "Project Expenditures" with respect to each Project shall mean all costs allowable under section 1.3, Part I of this Contract with respect to such Project.

(c) *Substantial Default.* For the purpose of this Contract a Substantial Default is defined to be the occurrence of any of the following events:

(1) If the Local Authority shall default in the observance or performance of the provisions of section 2.7; or

(2) If the Local Authority shall default in the observance or performance of the provisions of any Housing Assistance Payments Contract; or

(3) If the Local Authority shall fail or refuse to honor any duly issued Certificate of Family Eligibility in accordance with its terms; or

(4) Failure of the Local Authority to comply with the requirements of sections 2.8, 2.9, 2.10, or 2.11; or

(5) If there is any default by the Local Authority in the performance or observance of any term, covenant, or condition of this Contract other than the defaults enumerated in subsections (1) through (4) of this paragraph (c) and if such default has not been remedied within a reasonable time, not to exceed thirty days, after the Government has notified the Local Authority thereof.

2.3. *Maximum Income Limits and Rents.* (a) Subject to the approval of the Government, the Local Authority shall fix income limits for eligibility and rents after taking into consideration:

(1) The Family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family; and

(2) The economic factors which affect the financial stability and solvency of the Projects.

(b) Income limits shall restrict eligibility to Families (as defined in section 2.2) and shall assure the financial solvency of the Projects. Income limits and rents as fixed by the Local Authority shall meet the requirements of applicable local law.

(c) The Local Authority shall submit to the Government for its approval a schedule or schedules of income limits and rents, together with such supporting data and documents as the Government may require.

(d) The Local Authority may at any time review and revise such schedules, and shall review and revise such schedules if the Government determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the Act.

2.4. *Admission Policies.* (a) The Local Authority shall duly adopt and promulgate, by publication or posting in a conspicuous place for examination by prospective tenants, regulations establishing its policies for the issuance of Certificates of Family Eligibility.

Such regulations must be reasonable and give full consideration to its public responsibility for rehousing Displaced Families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income, and shall accord to Families consisting of two or more persons such priority over Families consisting of single persons as the Local Authority determines to be necessary to avoid undue hardship.

(b) The Local Authority shall promptly notify any applicant determined to be ineligible for housing assistance payments of the basis for such determination and provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination. Any applicant determined to be eligible for housing assistance payments shall be given a Certificate of Family Eligibility or shall be notified of the date when such Certificate will be issued, insofar as such date can be reasonably determined.

2.5. *Continued Eligibility.* (a) The Local Authority shall periodically reexamine the incomes of Families for whom housing assistance payments are being made; Provided, however, that the length of time between the issuance of a Certificate of Family Eligibility to a Family subject to yearly reexamination and the first reexamination of such Family may be extended by not more than six months if necessary to fit a reexamination schedule established by the Local Authority.

(b) If, upon such reexamination, it is found that Family income or composition has changed, the portion of rent payable by the Family and the amount of housing assistance payment shall be adjusted accordingly.

(c) If, upon such reexamination, it is found that the income of a Family increased beyond the approved income limits for the Project, housing assistance payments for such Family shall terminate.

2.6. *Applications and Certifications.* (a) Prior to the issuance of a Certificate of Family Eligibility to each Family and thereafter on the date established by the Local Authority for each examination of the status of such Family, the Local Authority shall obtain a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary to enable the Local Authority to determine whether the Family meets the conditions of eligibility for housing assistance payments.

(b) The Local Authority shall establish policies governing the nature and extent of investigations to be made of applicants' and tenants' statements relating to their eligibility.

(c) A duly authorized official of the Local Authority shall, at times prescribed by the Government, make written certifications to the Government that each Certificate of Family Eligibility issued during the period covered by the certification was issued in accordance with its duly adopted regulations and approved income limits.

2.7. *Maintenance and Inspections.* (a) The Local Authority shall require as a condition for the making of housing assistance payments, that the Owner at all times maintain the Project in decent, safe, and sanitary condition.

(b) The Local Authority shall make inspections of dwelling units prior to commencement of occupancy by Families, and of grounds, facilities, and areas for their benefit and use, and shall make subsequent inspections, adequate to assure that decent, safe, and sanitary housing accommodations are being provided.

2.8. *Nondiscrimination in Housing.* (a) The Local Authority shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The Local Authority shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department and the Local Authority any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other].

(b) The Local Authority shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. In determining the eligibility of any family for admission, no family shall be automatically excluded because of membership in a class such as unmarried mothers or families having police records or poor rent-paying habits, etc.

2.9. *Affirmative Fair Housing Market Regulation.* In connection with invitations of applications for and issuance of Certificates of Family Eligibility, the Local Authority shall comply with the Affirmative Fair Housing Marketing Regulations, including the submission for Government approval of an Affirmative Marketing Plan and compliance with such approved Plan, as if the Local Authority were expressly subject to said Regulation.

2.10. *Equal Employment Opportunity.* The Local Authority shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The Local Authority shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2.11. *Employment of Project Area Residents and Contractors.* The Local Authority shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply with

section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

2.12. Insurance and Fidelity Bond Coverage. (a) For purposes of protection against hazards arising out of or in connection with the administrative activities of the Local Authority in carrying out the Project, the Local Authority shall carry adequate (1) comprehensive general liability insurance, (2) workmen's compensation coverage (statutory or voluntary), and (3) a automobile liability insurance against property damage and bodily injury (owned and non-owned).

(b) The Local Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

(c) Each insurance policy or bond shall be written to become effective at the time the Local Authority becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Local Authority is subject to such risk or hazard. Such insurance and bonds shall (1) be payable in such manner, (2) be in such form, and (3) be for such amounts, all as may be determined by the Local Authority and approved by the Government, and shall be obtained from financially sound and responsible insurance companies.

(d) In connection with each policy, including renewals, for comprehensive general liability insurance the Local Authority shall give full opportunity for open and competitive bidding. The Local Authority shall give such publicity to advertisements for bids as will assure adequate competition and shall afford an opportunity to bid to all insurers who have indicated in writing to the Local Authority their desire to submit a bid and who are licensed to do business in the State. Such insurance shall be awarded to the lowest responsible bidder. The lowest bid shall be determined upon the basis of net cost to the Local Authority. Net cost, for the purposes of this subsection (d), shall mean the gross deposit premium, plus the cost of insurance against the hazards, if any, of assessments, less any anticipated dividend based on the dividend payment and assessment record of the insurer for the previous ten years. Nothing in this subsection (d) shall have the effect of requiring the Local Authority to purchase insurance from any insurer not licensed to do business in the State or to purchase insurance which involves any hazard of assessment unless insurance against such hazard is available.

(e) The Local Authority shall require that each liability insurance policy prohibit the insurer from defending any tort claim on the ground of immunity of the Local Authority from suit.

(f) The Local Authority shall submit certified duplicate copies of all insurance policies and bonds to the Government not less than forty-five days before the effective date thereof for review to determine compliance with this Contract. Unless disapproved by the Government within thirty days of the date submitted, the policies and bonds submitted shall be considered as approved by the Government.

(g) If the Local Authority shall fail at any time to obtain and maintain insurance

as required by subsections (a), (b), (c), and (d) of this section 2.12, the Government may obtain such insurance on behalf of the Local Authority and the Local Authority shall promptly reimburse the Government for the cost thereof together with interest at the then going Federal rate as determined pursuant to section 2(10) of the Act.

2.13. Procurement. In the purchasing of equipment, materials, and supplies, and in the award of contracts for services, the Local Authority shall comply with all applicable State and local laws, and in any event shall make such purchases and award such contracts only to the lowest responsible bidder after advertising a sufficient time previously for proposals, except:

(a) When the amount involved in any one case does not exceed \$2,500; or

(b) When the public exigencies require the immediate delivery of the articles or performance of the service; or

(c) When only one source of supply is available and the purchasing or contracting officer of the Local Authority shall so certify; or

(d) When the services required are (1) of a technical and professional nature, or (2) to be performed under Local Authority supervision and paid for on a time basis.

2.14. Personnel. (a) The Local Authority shall adopt and comply with a statement of personnel policies comparable with pertinent local public practice. Such statement shall cover job titles and classifications, salary and wage rates for employees, weekly hours of work, qualification standards, leave regulations, and payment of expenses of employees in travel status.

(b) The Local Authority may charge contributions for participation in a retirement plan for its employees to Project Expenditures where such plan has been approved by the Government or is required by law.

(c) The Local Authority shall maintain complete records with respect to employee's leave, authorizations of overtime and official travel, and vouchers supporting reimbursement of travel expense.

(d) No funds of any Project may be used to pay any compensation for the services of members of the Local Authority.

2.15. Books of Account and Records; Reports; Audits. (a) The Local Authority shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the Local Authority of the Annual Contributions and other Project Receipts, if any.

(b) The Local Authority shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.

(c) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the Local Authority that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(d) The Local Authority shall not charge as a Project Expenditure the cost or expense of any audit with respect to any Project for any Fiscal Year unless (1) the Government has approved such audit, or (2) such audit is required by law, or (3) the Government has failed to furnish the Local Authority

with a report of its fiscal audit of the Local Authority's books of account for such Fiscal Year within six months after the end thereof and, subsequent to a notice by the Local Authority of such failure, the Government has failed to submit its report of such audit within three months after receipt of such notice.

2.16. General Depositary Agreement and General Fund. (a) Promptly after the execution of this Contract, the Local Authority shall enter into, and thereafter maintain, one or more agreements, which are herein collectively called the "General Depositary Agreement," in form prescribed by the Government, with one or more banks (each of which shall be, and continue to be, a member of the Federal Deposit Insurance Corporation) selected as depositary by the Local Authority. Immediately upon the execution of any General Depositary Agreement, the Local Authority shall furnish to the Government such executed or conformed copies thereof as the Government may require. No such General Depositary Agreement shall be terminated except after thirty days notice to the Government.

(b) All monies received by or held for account of the Local Authority in connection with the Projects shall constitute the General Fund.

(c) The Local Authority shall, except as otherwise provided in this Contract, deposit promptly with such bank or banks, under the terms of the General Depositary Agreement, all monies constituting the General Fund.

(d) The Local Authority may withdraw monies from the General Fund only for (1) the payment of Project Expenditures, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the Local Authority stating in proper detail the purpose for which such withdrawal is made.

(e) If the Local Authority (1) in the determination of the Government, is in Substantial Default, or (2) makes or has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this Contract or in any document or data submitted to the Government as a basis for this Contract or as an inducement to the Government to enter into this Contract, the Government shall have the right to require any bank or other depositary which holds any monies of the General Fund, to refuse to permit any withdrawals of such monies; *Provided, however,* That upon the curing of such Default the Government shall promptly rescind such requirement.

2.17. Pooling of Funds under Special Conditions and Revolving Fund. (a) The Local Authority may deposit under the terms of the General Depositary Agreement monies received or held by the Local Authority in connection with any other housing project developed or operated by the Local Authority pursuant to the provisions of any contract for annual contributions, administration, or lease between the Local Authority and the Government.

(b) The Local Authority may also deposit under the terms of the General Depositary Agreement amounts necessary for current expenditures of any other project or enterprise of the Local Authority, including any project or enterprise in which the Government has no financial interest; *Provided, however,* That such deposits shall be lump-sum transfers from the depositaries of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

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(c) If the Local Authority operates other projects or enterprises in which the Government has no financial interest it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depository Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the Local Authority; *Provided, however,* That all deposits in such revolving fund shall be lump sum transfers from the depositories of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The Local Authority may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depository Agreement.

(e) In no event shall the Local Authority withdraw from any of the funds or accounts authorized under this section 2.17 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.18. *Assignment of Interest in Project to Government; Continuance of Annual Contributions.* Upon the occurrence of a Substantial Default (as herein defined) with respect to any Project the Local Authority shall, if the Government so requires, assign to the Government all of its rights and interests in and to the Project, or such part thereof as the Government may specify, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this Contract until reassigned to the Local Authority. After the Government shall be satisfied that all defaults with respect to the Project have been cured and that the Project will thereafter be operated in accordance with the terms of this Contract, the Government shall reassign to the Local Authority all of the rights and interests of the Government in and to the Project as such rights and interests exist at the time of such reassignment.

2.19. *Remedies Not Exclusive and Non-Waivers of Remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, LHA and/or the Government from exercising any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial action for the same or any subsequent default.

2.20. *Interest of Members, Officers, or Employees of Local Authority, Members of Local Governing Body, or Other Public Officials.* (a) Neither the Local Authority nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the Local Authority, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Authority was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Local Authority, or any such governing body member or such other public

official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Local Authority and such disclosure is entered upon the minutes of the Local Authority, the Local Authority, with the prior approval of the Government may waive the prohibition contained in this subsection; *Provided, however,* That any such present member, officer, or employee of the Local Authority shall not participate in any action by the Local Authority relating to such contract, subcontract, or arrangement.

(b) The Local Authority shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

No member, officer, or employee of the Local Authority, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the Local Authority was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

(c) The provisions of the foregoing subsections (a) and (b) of this section 2.20 shall not be applicable to the General Depository Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.21. *Interest of Member of or Delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

APPENDIX III—AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into this _____ day of _____, 19____, by and between the _____ ("LHA"), a body, corporate and politic, organized and existing under and by virtue of the laws of the State of _____, and _____ ("Owner").

Whereas, the Owner proposes to complete a Project consisting of substantial rehabilitation of certain housing (as described in the Owner's approved proposal, including any approved modifications, attached hereto as Exhibit "A"); and

Whereas, the Owner and the LHA propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said Project for the purpose of making housing assistance payments to enable eligible low-income families ("Families") to occupy said Project, or units therein as described in Exhibit "B", attached hereto; and

Whereas, the LHA has entered into an Annual Contributions Contract dated _____, with the United States of America (hereinafter called the "Government"), with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the LHA pursuant to section 23 of the United States Housing Act of 1937 for the purpose of making housing assistance payments, which ACC is attached hereto as Exhibit "C"; and

Whereas, the rehabilitator of this Project is the Owner. (Name of rehabilitator if he is not the Owner) _____

Now therefore, the parties hereto agree as follows:

1. *The Rehabilitation.* The rehabilitated Project shall be in accordance with Exhibit

"A". The Owner shall be solely responsible for completion of the Project and nothing contained in this Agreement shall create or affect any relationship between the LHA and the lender or any contractors or subcontractors employed by the Owner in the completion thereof.

2. *Time for completion.* a. The Project shall be completed in accordance with section 4 no later than ____ days after the date of this Agreement.

The Owner agrees that no later than _____, 19____, the work will be commenced and diligently continued. The LHA reserves the right to cancel this Agreement, subject to Government approval, in the event the work is not commenced and/or diligently continued as aforesaid.

b. In the event that there is delay in the completion of this Project due to strikes, lockouts, labor union disputes, fire, unusual delay in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the LHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes.

3. *Changes during rehabilitation.* The LHA with HUD approval, may reduce the rents payable to the Owner if deviations from Exhibit "A" alter the Project design or quality or other basis for proposal selection. Accordingly, the Owner shall obtain prior written approval for such changes from the LHA and the Government.

4. *Project completion; execution of housing assistance payments contract.* a. *Evidence of completion.* The completion of the Project shall be evidenced by furnishing the LHA with the following:

(1) a certificate of occupancy and/or other official approvals necessary for occupancy; and

(2) separate certifications by a registered architect¹ and the Owner that: (a) There are no defects or deficiencies in the Project; (b) all work has been completed in accordance with the terms and conditions of this Agreement; and (c) the Project is in good and tenable condition.

b. *Government Inspection.* (1) The LHA shall notify the Government when the Project is completed. Upon receipt of such notification a Government representative shall inspect the Project and the evidence of completion listed in paragraph a above. The Government shall make a written determination as to whether or not the Project has been satisfactorily completed. If the determination is in the affirmative, the Government will authorize the execution of the Contract. If the LHA or the Owner disagrees with the Government determination, the matter may be appealed to the Secretary of Housing and Urban Development as if it were a dispute under section 9b of this Agreement.

(2) If the Owner, after furnishing the LHA with all the items in paragraph a above, believes that the LHA has unreasonably withheld or delayed notification to the Government of Project completion, the Owner may make a written request to the Government to determine if the Project is completed and take action as provided in paragraph b(1) above.

5. *Housing assistance payments contract.* a. Upon written determination by the Government that the Project has been completed in accordance with the terms and conditions of this Agreement, the Owner and the LHA

¹ If working drawings and specifications were prepared and certified to by a registered architect, the same architect shall furnish the certification required in this paragraph.

shall execute the Contract attached hereto as Exhibit "D".

b. The rents to the Owner, by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract. Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than in accordance with section 3 of this Agreement.

8. *Relocation requirements.* a. The Owner hereby certifies that the Project was without occupants as of the date of the Notification of Selection by checking the "Yes" box below.

- ☐ Yes
☐ No

b. If the answer to a above is "No", the Owner hereby agrees to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable Government regulations and requirements issued pursuant thereto, and the following shall apply:

(1) The maximum potential amount of all relocation costs as calculated by the LHA and approved by the Government is ----- dollars.

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the LHA for the purpose of meeting relocation costs.

(3) The Owner hereby voluntarily undertakes liability for all relocation costs with respect to site occupants and agrees that if the funds in the escrow account shall prove to be insufficient to meet all such relocation costs, he will deposit such additional amounts as the LHA determines to be necessary for such purpose.

(4) When the LHA determines, with Government approval, that there is no longer any potential liability for relocation costs, any balance in the escrow account shall be paid to the Owner.

7. *Employment of project area residents and contractors.* The Owner shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply (including compliance with the Government-approved affirmative action plan for utilization of Project area businesses) with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

8. *Equal employment opportunity.* a. The Owner shall incorporate or cause to be incorporated into any contract for rehabilitation work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is to be performed pursuant to this Agreement the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without re-

gard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Authority setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Local Authority advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted rehabilitation work.

c. The Owner agrees that he will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

9. *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the LHA and Owner may be submitted by either party to the HUD Area Director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the LHA.

b. The decision of the Area Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Area Director a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Area Director.

c. This "Disputes" section does not preclude consideration of questions of law in connection with decisions rendered under paragraph a of this section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

10. *Interest of members, officers, or employees of local authority, members of local governing body, or other public officials.* No member, officer, or employee of the LHA, no member of the governing body of the locality (city and county) in which the Project is situated, no member of the governing body of the locality in which the LHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

11. *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

PROPOSED RULES

12. *Nohassignability.* a. The Owner agrees that he has not made, and will not make, any sale, assignment, or conveyance or transfer in any other form of this Agreement or the Project, or any part thereof, or any of his interests therein, except as follows:

(1) With the prior consent of the LHA and the Government; or

(2) To a financial institution or trustee for the purpose of obtaining financing of the Project, to which assignment the LHA and the Government shall consent in writing if requested by the Owner or the lender.

b. The Owner agrees that he will not change to a different rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the LHA and the Government.

c. The Owner agrees that the approved rehabilitator has not made, and will not make, except with the prior consent of the LHA and the Government, any assignment or transfer in any form of the rehabilitator's contract to perform the rehabilitation work, or of any part thereof, or any of the rehabilitator's interests therein.

d. The Owner agrees to notify the LHA and the Government promptly of any proposed action covered by paragraph a or b or c of this section. The Owner further agrees to request the written consent of the LHA and the Government except where the proposed action is covered by paragraph a(2) of this section.

e. For the purpose of this section, a transfer of stock in the Owner or rehabilitator in whole or in part, by a party holding ten percent or more of the stock of said Owner or rehabilitator, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to parties in control of the Owner or rehabilitator or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the Project, or the rehabilitation contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

13. *Authority of the LHA.* The LHA warrants that it is a duly organized body, corporate and politic, authorized by law to engage in the development or administration of low-rent housing or slum clearance, and that it is in fact and in law authorized to execute this Agreement.

14. *Annual contributions contract.* The execution of the ACC by the Government signifies that said ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payment to assist the LHA in the performance of its obligations under the Housing Assistance Payments Contract. The LHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder with respect to the Project.

In witness whereof, the parties hereto have executed this Agreement in four original counterparts as of the day and year first above written.

LHA: _____
By: _____
Owner: _____
By: _____

APPENDIX IV—HOUSING ASSISTANCE PAYMENTS CONTRACT

This Housing Assistance Payments Contract ("Contract") is made and entered into on this ____ day of _____, 19____, by and between _____ ("Owner") and _____ ("LHA") a public body, corporate and politic, organized and existing under and by virtue of the laws of the State of _____.

The Owner and the LHA agree as follows:

1. *Purpose of contract.* a. The LHA hereby agrees to make housing assistance payments on behalf of eligible low-income families ("Families") for the number and type of units specified in Schedule "A", attached hereto ("assisted unit(s)"), to enable such Families to lease decent, safe, and sanitary housing pursuant to section 23 of the United States Housing Act of 1937.

b. The assisted units are to be leased by the Owner to Families for use and occupancy by such Families solely as private dwellings.

2. *Annual contributions contract.* a. The LHA has entered into an Annual Contributions Contract dated _____, with the United States of America (hereinafter called the "Government"), with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the LHA pursuant to section 23 of the United States Housing Act of 1937, for the purpose of making housing assistance payments, which ACC is attached hereto.

b. The LHA hereby pledges such annual contributions to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract. The LHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder with respect to the Project.

c. (1) The Owner shall submit monthly requests to the LHA for housing assistance payments. Each such request shall set forth: (a) The name of each Family and the address and/or number of the unit leased by the Family; (b) the rent as set forth in Schedule "A" for each leased unit and the amount of rent payable by the Family leasing the unit; and (c) the amount of housing assistance payment requested by the Owner. Upon the determination of the LHA that the amount of the request is correct and that the Owner is in compliance with the provisions of this Contract, the LHA shall pay to the Owner the amount of housing assistance payment requested.

(2) If the Owner has received an excessive payment, the LHA, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(3) The statements set forth in each of the Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

4. *The premises—A. Definition.* The term "Premises", as used in this Contract, means units which are leased by eligible Families and areas, facilities and grounds which are for their benefit or use, as described in the "Property Description" attached hereto.

b. *Legal Interest.* The Owner warrants that it has the legal right and power to execute this Contract and to lease dwelling unit(s) in the Premises.

c. *Owner's Warranty of Condition of Premises.* The Owner warrants that the Premises have been rehabilitated in accordance with the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") applicable to the Premises.

ing Assistance Payments Contract ("Agreement") applicable to the Premises.

3. *Housing assistance payments.* a. Housing assistance payments shall be made by the LHA to the Owner, under the terms and conditions of this Contract, only for the period during which assisted units are leased by Families under Leases approved by the LHA. If a Family vacates its unit in violation of the provisions of its Lease, the Owner may continue to receive housing assistance payments with respect to such unit in accordance with the terms of the Contract, not beyond the termination of the Lease (in accordance with its terms), but only if the Owner (1) has promptly (within 30 days) notified the LHA of the vacancy and (2) has not rejected, except for good cause acceptable to the LHA, any substitute Family provided by the LHA.

b. Housing assistance payments shall equal the difference between the rents for the units leased by Families as set forth in Schedule "A" and the amounts of such rents payable by Families. The LHA shall determine the eligibility of Families and the amount of rentals and other charges to be paid by each Family to the Owner in accordance with standards applicable to the Housing Assistance Payments Program. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income or composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Owner and the Family. However, an increase or decrease in the amount payable by the Family shall be offset by a corresponding decrease or increase in the amount of housing assistance payment.

c. The sole financial obligation of the LHA shall be to make housing assistance payments on behalf of the Family. Neither the LHA nor the Government has assumed any obligation whatsoever for the amount of rent payable by the Family or the satisfaction of any claim by the Owner against the Family.

d. Housing assistance payments shall not be made for units which are: (1) Vacant except as provided in section 3a above; (2) leased by other than eligible Families; or (3) subject to rent abatement as provided in section 4d below.

1. *Maintenance and Operation of Premises.* The Owner agrees to maintain and operate the Premises so as to provide decent, safe, and sanitary housing, including the provision of all services and maintenance under Owner-Family Lease(s). If, at any time during any term of this Contract, the Owner fails to comply with this obligation with respect to any unit leased by an eligible Family, either: (1) Housing assistance payments on behalf of such Family shall be abated, effective upon written notification to the Owner, until such time as the obligation is complied with, or (2) this Contract shall be terminated in accordance with section 14b of this Contract.

e. *LHA Inspections.* (1) Prior to occupancy of any unit by an eligible Family, the LHA shall inspect the unit, or cause it to be inspected, to determine that the unit is in decent, safe, and sanitary condition.

(2) The LHA may inspect or cause to be inspected, at least annually, the Premises to determine that they are in decent, safe, and sanitary condition.

5. *Term of contract.* The initial term of this Contract shall be ____ years (not to exceed five years) beginning _____, 19____, and ending _____, 19____. This Contract shall be renewed, at the option of the Owner, for an additional term(s) of ____ years (not to exceed

five years each), provided that the total Contract term, including renewals, shall not exceed 15 years. Renewals shall be automatic unless: (1) The Owner notifies the LHA, no later than 60 days prior to the expiration of the current term, of his intention not to renew or to request a rent renegotiation pursuant to section 6 below; or (2) the LHA notifies the Owner, no later than 30 days prior to the expiration of the current term, that he is in Default, as defined in section 14 below. The term of Owner-Family Lease, including renewals, if any, shall not extend beyond the term of this Contract.

6. *Rent adjustments.* The payment of increased housing assistance payments as a result of rent adjustments under this section shall be subject to the provisions contained in subsection c hereof.

a. *Automatic Annual Adjustments.* (1) The monthly rents in Schedule "A" shall be adjusted automatically on the date of execution of this contract and on each annual anniversary date of this Contract. The adjustment(s) shall be based upon the Government-determined Adjustment Factor, as defined below.

(2) The Adjustment Factor is the Government-determined percentage change in the Government-established fair market rent for existing housing for the market area in which the Premises are located.

(3) The amount of each automatic annual adjustment shall be computed by applying the Adjustment Factor in effect at the time of the adjustment (provided that the Adjustment-Factor determination is not more than one year old) to the rents shown in Schedule "A", as it may be amended from time to time.

(4) In no case may an annual adjustment result in Contract rents which, together with any allowance for utilities payable directly by Families, would exceed the fair market rents in effect for the market area at the time of adjustment. For the first four annual adjustments the fair market rents shall be those which apply to newly constructed housing, plus the percentage, if any, by which the original Schedule "A" Contract rents exceeded the then applicable fair market rents. For all subsequent adjustments, the fair market rents shall be those which apply to existing housing.

(5) Rents may be adjusted upward or downward, as may be appropriate; provided that, in no case shall the adjusted rents be less than the original Schedule "A" rents.

b. *Renegotiations.* The Contract rents in Schedule "A" may be renegotiated to become effective at the beginning of the sixth and eleventh years of the Contract (if the Contract is renewed for that length of time), whether or not such effective date of renegotiation coincides with the beginning of a renewal term. However, such renegotiations may not result in rents in excess of the fair market rents for existing housing for the housing market area in effect at the time of renegotiation.

c. *Limitation.* The LHA will make housing assistance payments in increased amounts commensurate with upward rent adjustments under this section, but only to the extent possible within the limits of the maximum total amount of Annual Contributions payable under the Annual Contributions Contract in respect to the Project. No commitment is made by the LHA or the Government that the maximum total amount of Annual Contributions payable in respect to the Project, as specified in Part I of said Contract, will be increased by reason of any such rent adjustments. Accordingly, to enable the Owner to receive sufficient income from rents, the Owner shall have the right to select, and the LHA shall be obligated to

approve as promptly as possible. Families whose average rent payments will result in receipts commensurate with the adjusted rents.

7. *Contract Amendment.* Any adjustment or renegotiation in Schedule "A" rents shall be incorporated by amendment to Schedule "A" of this Contract.

8. *Utilities.* The Owner agrees to provide and to pay promptly when due all utilities for the Premises, except to the extent that Families are obligated to pay directly for utilities for their respective units.

9. *Admission of families.* a. Families may apply to either the LHA or the Owner. The Owner may select a Family, subject to the Family's obtaining a Certificate of Family Eligibility from the LHA, or may refer all applications to the LHA for selection.

b. In the selection of Families, or in the approval thereof, the Owner and the LHA shall comply with the Government-approved Affirmative Marketing Plans, which are attached hereto and made a part hereof.

10. *Nondiscrimination in housing.* a. Neither the Owner nor the LHA shall, in the selection or approval of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. In determining the eligibility of Families for admission to the Premises, no person shall be automatically excluded because of membership in a class such as unmarried mothers or families having police records or poor rent-paying habits, etc.

b. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination.

11. *Employment of project area residents and contractors.* The Owner shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply (including compliance with the Government-approved affirmative action plan for utilization of project area businesses) with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

12. *Eviction.* The Owner shall not evict, nor give an eviction notice to, any Family without having notified the LHA of the grounds and obtained the LHA's authorization for the proposed eviction. In the event the Owner requests such authorization, the LHA shall give the authorization unless the circumstances are such that in the LHA's judgment the granting thereof would be an abuse of the LHA's discretion.

13. *Owner-family lease.* The lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

a. The total rent to the Lessor for this unit shall be \$----- per month. Inasmuch as the Lessor has contracted with ----- (Housing Authority), herein referred to as the LHA, for housing assistance payments on behalf of the Lessee, the amount of rent payable by the Lessee shall be \$----- The amount shall be subject to change by reason of changes in the family income or composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Lessee and Lessor. However, any increase or decrease in the rent payable by the Lessee shall be offset by a corresponding decrease or increase in the amount of the housing assistance payments.

b. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

c. The Lessor shall not evict nor give an eviction notice to the Lessee without having notified ----- (the LHA) of the grounds and obtained the LHA's authorization for the proposed eviction.

d. The Lessee shall permit inspections of his dwelling unit, provided such inspections are made at a reasonable time and after reasonable notice has been given.

e. The Lessor covenants that the Lessee shall have peaceful possession of his unit.

f. The Lessor shall continue to maintain the dwelling unit in a decent, safe, and sanitary condition, as determined by the LHA.

g. The Lessor shall perform all maintenance, repair, and replacement services for the Premises (including the equipment, grounds, and common areas thereof). Minimum standards of maintenance under this Lease shall include at least the following:

(1) Custodial services (including, but not limited to: cleaning of hallways, garbage storage areas, and all public or common areas on a regularly scheduled basis but not less frequently than -----; and provision of an adequate supply of trash and garbage storage equipment, and/or adequate trash and garbage disposal);

(2) Grounds maintenance (including, but not limited to: exterior custodial services on a regularly scheduled basis; maintenance of lawns and outdoor plantings, including lawn cutting and reseeding);

(3) Prompt response to Lessee service calls (including, but not limited to: calls with respect to refrigerators, ranges, plumbing, heating, electrical and hot water fixtures and systems, and broken, stuck, or damaged doors, screens, or windows);

(4) Repainting and redecorating dwelling space and non-dwelling space surfaces on a regularly scheduled basis as appropriate;

(5) Prompt replacement of light bulbs and other lighting equipment in non-dwelling spaces, common areas, and outdoor areas;

(6) Exterminating services on a regularly scheduled basis, but not less frequently than -----;

(7) Where applicable, removal of snow and ice from walkways, exterior stairs, and parking areas on a timely basis;

(8) Repair of walkways and parking lot surfaces;

(9) Where applicable, repair of garbage disposals, dishwashers, air conditioners, and laundry equipment;

(10) Where applicable, regular maintenance and prompt repair of elevators, incinerators, compactors, and laundry equipment and facilities;

(11) Such other maintenance services as are generally supplied to tenants in the housing market area.

h. The Lessor shall provide at least those security services generally supplied to tenants in the housing market area.

i. The sole financial obligation of the LHA shall be to make housing assistance payments

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on behalf of the Lessee. Neither the LHA nor the Federal Government has assumed any obligation whatsoever for the amount of rent payable by the Lessee or the satisfaction of any claim by the Lessor against the Lessee.

j. If the Lease contains a notice-to-vacate provision and the Lessee vacates the dwelling unit without giving the required 30-day notice to the Lessor, the Lease shall terminate on the date when it would have terminated if the Lessee had given notice in accordance with the provisions of the Lease on the date that he vacated the dwelling unit. If the Lease does not contain a notice to vacate provision and the Lessee vacates the dwelling unit before the end of the Lease term, the Lessor's rights to continue to receive housing assistance payments are governed by the Housing Assistance Payments Contract.

k. If any of these required Lease provisions should conflict with any other provisions of the this Lease, the required provisions shall prevail.

14. *Default by the owner.* a. A Default by the Owner under this Contract shall result if:

(1) The Owner has failed to comply with any provisions of the Contract or of any Owner-Family Lease;

(2) The Owner has failed to perform any of its obligations under the Contract or under any Owner-Family Lease; or

(3) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Owner-Family Lease.

b. Upon the determination by the LHA that a Default has occurred, the LHA, with approval of HUD, may notify the Owner that the LHA is terminating the Contract effective 30 days from the date of notice, unless within that period the Owner cures any non-compliance, or initiates a course of corrective action which will cure the non-compliance within such minimum additional time as may be necessary and agreed to by the LHA with the approval of HUD. If the LHA so notifies the Owner, it shall also send a copy of such notice to the Family, together with information regarding continued assistance.

15. *Default by the LHA.* a. A Default by the LHA under this Contract shall result if:

(1) The LHA has violated or failed to comply with any provisions of the Contract or failed to perform any of its obligations under this Contract; or

(2) This Contract at any time is held to be void, voidable, or ultra vires, or the power or right of the LHA to enter into this Contract is drawn into question in any legal proceeding; or

(3) The LHA asserts or claims that this Contract is not binding upon it for any reason, or otherwise asserts or demonstrates that it does not intend to fulfill its obligations under said Contract.

b. Upon the determination by the Government that a Default by the LHA has occurred, the following provisions of the ACC (which is hereby made a part of this Contract), shall be applicable:

(In such case) the Local Authority shall, if the Government so requires, assign to the Government all of its rights and interests in and to the Project, or such part thereof as the Government may specify and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this Contract until reassigned to the Local Authority. After the Government shall be satisfied that all defaults with respect to the Project have been cured and that the Project will thereafter be operated in accordance with the terms of this Contract, the Government shall reassign to the Local Authority all

of the rights and interests of the Government in and to the Project as such rights and interests exist at the time of such reassignment.

16. *Remedies not exclusive and non-waiver of remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, LHA and/or the Government from exercising any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial action for the same or any subsequent default.

17. *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the LHA and Owner may be submitted by either party to the HUD Area Director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the LHA.

b. The decision of the Area Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Area Director a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Area Director.

c. This section does not preclude consideration of questions of law in connection with the decisions rendered under paragraph a and b of this section; *Provided, however,* That nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

18. *Interest of members, officers or employees of local authority, members of local governing body or other public officials.* No member, or employee of the LHA, no member of the governing body of the locality (city and country) in which the Premises are situated, no member of the governing body of the locality in which the LHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Premises, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising from it.

19. *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commission shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

20. *Nonassignability.* a. The owner agrees that he has not made, and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the Premises, or any part thereof, or any of his interest therein, except with the prior consent of the LHA and the Government.

b. The Owner agrees to notify the LHA and the Government promptly of any proposed

action covered by paragraph of this section, and to request the written consent of the LHA and the Government in regard thereto.

c. For the purpose of this section, a transfer of stock in the Owner in whole or in part by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner or any other similarly significant change in the ownership of such stock or in the relative distribution thereof in or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or addition stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

21. *Entire agreement.* This Contract constitutes the entire agreement of the parties in respect to the Premises, and there are no oral agreements between the parties. No change in this Contract shall be made except in writing signed by both the Owner and the LHA and approved by the Government.

Local Housing Authority:

By: _____

Owner:

By: _____

Approved:

United States of America
Secretary of Housing and
Urban Development

By: _____

APPENDIX V—CERTIFICATE OF FAMILY ELIGIBILITY

1. *Family.* This to certify that _____ (head of _____, herein referred to as the Family-eligible family)

is eligible for housing assistance payments under the section 23 Housing Assistance Payments Program operated by _____ (name of Local

_____ herein referred to as the Housing Authority)

LHA, as set forth more fully below. This Certificate shall automatically expire at the end of 45 days from _____

(date of Certificate) unless the Family has provided the LHA with a written offer by an owner as described in 3.b below. This Certificate may be extended by the LHA, at its discretion, upon submission by the Family of this Certificate to the LHA.

2. *Housing Assistance Payments.* a. The LHA has determined that the Family can afford to pay \$_____ toward gross rent (including the cost of utilities). The LHA will pay on behalf of the Family a housing assistance payment in the amount of the difference between the rent chargeable by the Owner and that portion of the rent payable

¹ Enter appropriate amount consistent with the applicable rent to income ratio, not to exceed 25 percent of the Family's adjusted income.

by the Family, provided that the rent chargeable by the Owner shall not exceed the fair market rent established by the Department of Housing and Urban Development (HUD) for a bedroom unit suitable to the Family's needs, less any allowance for utilities payable directly by the Family.

b. The amount payable by the Family shall be subject to change by reason of changes in Family income or Family composition, as determined by the LHA, effective as of the date stated in a notification of such change to the Family and the Owner. Any increase or decrease in the amount payable by the Family shall be offset by a corresponding decrease or increase in the amount of Housing Assistance Payment.

3. *Authorization to Family.* The Family is authorized by the LHA to:

a. Find a dwelling unit which is suitable to the Family's needs and is decent, safe, and sanitary as determined by the LHA; and

b. Obtain a written offer by the Owner of said unit to lease the unit to the Family in accordance with the provisions of this Certificate of Family Eligibility, and to submit such offer, in the prescribed form (Owner's Offer to Lease Dwelling Unit) attached hereto, to the LHA for its approval.

4. *Action by the LHA.* The LHA shall, as promptly as possible, inspect, or cause to be inspected, the offered unit, and, if the LHA determines that (a) the unit is suitable for the Family's needs and is in decent, safe, and sanitary condition, (b) the proposed rent is acceptable, and (c) the LHA has sufficient funds available under its Annual Contributions Contract, the LHA shall execute a Housing Assistance Payments Contract (prescribed form attached hereto) for the approved dwelling unit and approve the Lease for said unit.

5. *Conditions.* a. Breach or noncompliance with any of the following conditions may terminate eligibility for housing assistance payments:

(1) The dwelling unit shall continue to be decent, safe, and sanitary as determined by the LHA.

(2) The term of the Lease between the Owner and the Family shall be for not less than one year and shall generally be for not more than one year but may contain an option of either party to terminate upon 30 days advance notice in writing. The Lease may be renewed upon expiration of the original term; however, the specified lease term, including specified renewal options, if any, shall in no event exceed three years or the term of the Annual Contributions Contract pertaining to the Lease, whichever is shorter.

(3) The Lease shall include the special provisions attached hereto as Attachment 1.

(4) The Family shall make timely rental payments to the Lessor under the LHA-approved Lease.

(5) The Family shall provide such Family income information and records as may be required in the administration of the program, and shall permit inspections of its dwelling unit, provided that such inspections are made at a reasonable time and after reasonable notice has been given.

b. The Family must continue to occupy its approved unit to remain eligible for housing assistance payments except that:

(1) If the Family (a) wishes to vacate its unit at the end of the Lease term, or prior thereto in accordance with the provisions of the Lease, in order to move to another approvable unit, or (b) is required to move for reasons other than violation of the Lease on the part of the Family, as determined by

the LHA, and wishes to move to another approvable unit, the Family shall be given a new Certificate of Family Eligibility providing for housing assistance payments for occupancy of such other unit, if:

(4) The Family provides reasonable notice to the LHA of its intention to vacate; and

(11) The LHA determines that the Family is in compliance with the provisions of the Lease, including provisions requiring notice to the Owner, if applicable; and

(111) The LHA has sufficient funds under its Annual Contributions Contract.

(2) If the Family wishes to vacate the unit prior to the termination of the Lease other than in accordance with the provisions of the Lease, in order to move to another approvable unit, the Family may be given a new Certificate providing for housing assistance payments for occupancy of such other unit if:

(1) The Family provides reasonable notice of its intention to vacate and the reason(s) therefor to both the LHA and the Owner; and

(11) The LHA determines that the Family is otherwise in compliance with the provisions of the Lease; and

(111) The LHA determines that the Family has good reasons to vacate; and

(iv) The LHA has sufficient funds under its Annual Contributions Contract, after meeting its obligations for housing assistance payments to the owner of the unit to be vacated.

6. *Equal Housing Opportunity.* If the Family has reason to believe that, in its search for suitable housing, it has been discriminated against on the basis of race, color, creed, religion, sex, or national origin, or because of membership in a class such as unmarried mothers or families having police records or poor rent-paying habits, etc., it may file a complaint with the HUD Regional Office of Equal Opportunity. Fair Housing Complaint Forms (HUD 903(s)) are available in this LHA Office.

7. *Availability of Funds.* It is the LHA's best judgment that it will have funds available to honor this Certificate when the Family locates an acceptable unit. However, honoring of this Certificate by the LHA is subject to the availability of funds to the LHA at that time.

I agree to the foregoing conditions in order to have housing assistance payments made in my behalf under the section 23 Housing Assistance Payments Program.

Signature of Head of Family

Signing for the LHA

Date

ATTACHMENT I—LEASE PROVISIONS REQUIRED FOR PARTICIPATION IN THE HOUSING ASSISTANCE PAYMENTS PROGRAM

a. The total rent to the Lessor for this unit shall be \$----- per month. Inasmuch as the Lessor has contracted with ----- (Housing Authority), herein referred to as the LHA, for housing assistance payments on behalf of the Lessee, the amount of rent payable by the Lessee shall be \$----- This amount shall be subject to change by reason of changes in family income or family composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Lessee and Lessor. However, any increase or decrease in the rent payable by the Lessee shall be offset by a corresponding decrease or increase in the amount of the housing assistance payments.

b. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds

of race, color, creed, religion, sex, or national origin.

c. The Lessor shall not evict nor give an eviction notice to the Lessee without having notified the LHA of the grounds and obtained the LHA's authorization for the proposed eviction.

d. The Lessee shall permit inspections of his dwelling unit, provided such inspections are made at a reasonable time and after reasonable notice has been given.

e. The Lessor covenants that the Lessee shall have peaceful possession of his unit.

f. The Lessor shall continue to maintain the dwelling unit in a decent, safe, and sanitary condition, as determined by the LHA.

g. The Lessor shall perform all maintenance, repair, and replacement services for the Premises (including the equipment, grounds, and common areas thereof). Minimum standards of maintenance under this Lease shall include at least the following:

(1) Custodial services (including but not limited to: cleaning of hallways, garbage storage areas, and all public or common areas on a regularly scheduled basis, but not less frequently than -----; and provision of an adequate supply of trash and garbage storage equipment, and/or adequate trash and garbage disposal);

(2) Grounds maintenance (including, but not limited to: exterior custodial services on a regularly scheduled basis: maintenance of lawns and outdoor plantings, including lawn cutting and reseeding);

(3) Prompt response to Lessee service calls (including, but not limited to: calls with respect to refrigerators, ranges, plumbing, heating, electrical and hot water fixtures and systems, and broken, stuck, or damaged doors, screens or windows);

(4) Repainting and redecorating dwelling space and non-dwelling space surfaces on a regularly scheduled basis as appropriate;

(5) Prompt replacement of light bulbs and other lighting equipment in non-dwelling spaces, common areas, and outdoor areas;

(6) Exterminating services on a regularly scheduled basis, but not less frequently than -----;

(7) Where applicable, removal of snow and ice from walkways, exterior stairs, and parking areas on a timely basis;

(8) Repair of walkways and parking lot surfaces;

(9) Where applicable, repair of garbage disposals, dishwashers, air conditioners, and laundry equipment;

(10) Where applicable, regular maintenance and prompt repair of elevators, incinerators, compactors, and laundry equipment and facilities;

(11) Such other maintenance services as are generally supplied to tenants in the housing market area.

h. The Lessor shall provide at least those security services generally supplied to tenants in the housing market area.

i. The sole financial obligation of the LHA shall be to make housing assistance payments on behalf of the Lessee. Neither the LHA nor the Federal Government has assumed any obligation whatsoever for the amount of rent payable by the Lessee or the satisfaction of any claim by the Lessor against the Lessee.

j. If the Lease contains a notice to vacate provision and the Lessee vacates the dwelling unit without giving the required 30-day notice to the Lessor, the Lease shall terminate on the date when it would have terminated if the Lessee had given notice on the date that he vacated the dwelling unit. If the Lease does not contain a notice to vacate provision and the Lessee vacates the dwelling unit before the end of the Lease term, the Owner's

* Enter the unit size, by number of bedrooms, for which the Family is eligible pursuant to the occupancy standards of the LHA.

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rights to continue to receive housing assistance payments are governed by the Housing Assistance Payments Contract.

k. If any of these required Lease provisions should conflict with any other provisions of this Lease, the required provisions shall prevail."

APPENDIX VI—OWNER'S OFFER TO LEASE
DWELLING UNIT

I _____ hereby offer
(name of owner/lessor)
the following dwelling unit _____
(street address/
_____ for lease by
apartment number, if any)
_____ for a period of
(name of head of family)
_____ months (not less than one year)
beginning _____

The unit, consisting of __ bedrooms, is to be leased at \$_____ per month. Such amount includes the cost of the utilities checked below:

_____ heat _____ electricity _____ gas
_____ water _____ other (specify)
_____ none.

The most recent rent charged for the above dwelling unit was \$_____ per month. The difference between this amount and the proposed rent, if any, is due to the following reasons:

The above dwelling unit is currently:

Vacant and I hereby certify that the unit was vacant prior to the date of execution of this Offer to Lease.

Occupied by the above-named family.

Occupied by other than the above-named family but it shall have been vacated prior to the execution of a lease with the above-named family as a result of (1) voluntary decision of occupant or (2) action by landlord for cause or (3) reasons clearly unrelated to the proposed leasing to the above-named family.

I have read the proposed Housing Assistance Payments Contract and, if such Contract is entered into, will comply with the provisions contained therein.

This offer shall expire _____ days from the date entered below.

Owner/Lessor Date

Accepted by: _____
Signing for LHA

Date

(Sec. 7(d), Department of Housing and Urban Development Act; (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937, (42 U.S.C. 1410(b)); sec. 23, U.S. Housing Act of 1937, (42 U.S.C. 1421(b)))

DANIEL P. KEARNEY,
Deputy Assistant Secretary for
Housing Production and
Mortgage Credit.

[FR Doc.74-3559 Filed 2-13-74;8:45 am]

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EXHIBIT X6 - NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENTS AND ORDERS

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

(pp. 926a-929a)

(7 CFR PARTS 1001, 1002, 1004, 1015, 1033, 1036, 1040, 1049)

Docket Nos. AO-14-A53, etc.

MILK IN THE BOSTON REGIONAL AND CERTAIN OTHER MARKETING AREAS

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO
TENTATIVE MARKETING AGREEMENTS AND ORDERS

<u>7 CFR PART</u>	<u>MARKETING AREA</u>	<u>DOCKET NO.</u>
1001	Boston Regional	AO-14-A53
1002	New York-New Jersey	AO-71-A68
<u>1004</u>	<u>Middle Atlantic</u>	<u>AO-160-A51</u>
1015	Connecticut	AO-305-A31
1033	Ohio Valley	AO-166-A44
1036	Eastern Ohio-Western Pennsylvania	AO-179-A39
1040	Southern Michigan	AO-225-A28
1049	Indiana	AO-319-A22

Notice is hereby given of a public hearing to be held at the U.S. Department of Agriculture (South Building, Jefferson Auditorium) 14th and Independence Avenue, Washington, D.C., beginning at 9:30 a.m., local time, on February 20, 1974, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the aforesaid specified marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to all proposals.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by National Farmers Organization:

Proposal No. 1 - Re 7 CFR Parts 1001, 1002, 1004

In §§ 1001.61(b), 1002.50a(c), and 1004.50(b), delete the language preceding the table therein and replace with the following:

"Subject to the adjustment set forth below for the applicable month, the Class II

price shall be the basic formula price for the month;"

Proposal No. 2 - Re 7 CFR Parts 1033, 1036, 1040

In §§ 1033.51(c), 1036.50(c), and 1040.50(c), delete the language presently therein and replace with the following:

"(c) The Class III price shall be the basic formula price for the month."

Proposal No. 3 - Re 7 CFR Part 1049

Amend §1049.50(b) by deleting the language presently therein and replacing with the following:

"(b) The Class II price shall be the basic formula price computed pursuant to §1049.51."

Proposed by Pennmarva Dairymen's Cooperative Federation, Inc.:

Proposal No. 4 - Re 7 CFR Parts 1001, 1002, 1004, 1015

Delete all of the words of §§ 1001.61(b), 1002.50a(c), 1004.50(b), and 1015.61(b), except the following:

"The Class II price shall be the basic formula price for the month."

Proposed by Eastern Milk Producers Cooperative Association, Inc.:

Proposal No. 5 - Re 7 CFR Parts 1001, 1002, 1004, 1015, 1036

Eliminate the alternative butter-powder formula provisions of §§ 1001.61(b), 1002.50a(c), 1004.50(b), 1015.61(b), and 1036.50(c) in all months except April, May, and June.

Proposed by New York-New England Dairy Cooperative Coordinating Committee:

Proposal No. 6 - Re 7 CFR Parts 1001, 1002, 1004, 1015, 1036

Change the method of determining the Class II price (Class III price under Order 36) to a simple average of the Minnesota-Wisconsin and butter-powder values as now calculated under Orders 1, 2, 4, 15, and 36 (instead of the lower of the two prices or values) except that for milk going into butter or nonfat dry milk the butter-powder value shall be used if it is lower than the Minnesota-Wisconsin price.

Proposed by Michigan Milk Producers Association, McDonald Cooperative Dairy Company, Constantine Cooperative Creamery Company, Michigan Producers Dairy Company, and Independent Cooperative Milk Producers Association:

Proposal No. 7 - Re 7 CFR Part 1040

1. Divide the present Class III classification into two classes as follows:

Class III - all present Class III utilization except butter and nonfat dry milk solids

Class IIIA - milk used to produce butter and nonfat dry milk solids

2. Class prices. Class III price to be the simple arithmetical average of of the Minnesota-Wisconsin series price for the current month and the present butter-powder formula price for the current month, but no lower than the butter-powder formula price for the current month.

Class IIIA price shall be the present butter-powder formula price for the current month.

3. Excess price. The excess price will be the lowest class price.

Proposed by Central Valley Milk, Inc.:

Proposal No. 8 - Re 7 CFR Part 1033.51(c)
Amend §1033.51(c) to read as follows:

§1033.51 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price, except that the price of butterfat and skim milk used to produce butter and nonfat dry milk shall be an amount computed as follows:

- (1) Multiply the Chicago butter price by 4.2;
- (2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and
- (3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph, subtract 48 cents, and round to the nearest cent.

Proposal No. 9

Take evidence with respect to the need to issue a decision on the proposed amendments on an emergency basis.

Proposed by Associated Milk Producers, Inc.:

Proposal No. 10 - Re 7 CFR Part 1049
Amend §1049.50(b) to read:

(b) Class II milk price. The Class II milk price shall be the basic formula price computed pursuant to §1049.51.

Proposed by Idlenot Farm Dairy, Inc.:

Proposal No. 11 - Re 7 CFR Part 1001
Remove the butter-powder formula price provisions of §1001.61(b).

Proposed by Fiorlat Dairy Products Corporation, Pollio Dairy Products Corporation, Friendship Dairies, Inc.:

Proposal No. 12 - Re 7 CFR Part 1002
Amend §1002.50a(c)(3) by changing "48 cents" stated therein to "65 cents" or to any other figure not to exceed 65 cents.

Proposed by H. P. Hood, Inc.:

Proposal No. 13 - Re 7 CFR Parts 1001, 1002, 1004, 1015
Amend §§ 1001.61(b)(3), 1002.50a(c)(3), 1004.50(b)(3), and 1015.61(b)(3) by substituting "72 cents" for "48 cents."

Proposal No. 14 - Re 7 CFR Parts 1001, 1002, 1004, 1015
Should the Class II price formula be amended so as to treat the price of Class II milk for the manufacture of butter and nonfat dry milk differently than other Class II

products, it is proposed that dry whole milk, storage cream, and frozen desserts be placed in the same category as nonfat dry milk and butter.

Proposed by Central Ohio Cooperative Milk Producers, Milk, Inc., Wayne Cooperative Milk Producers:

Proposal No. 15 - Re 7 CFR Part 1036

Amend the preamble of §1036.50(c) to read as follows:

"(c) Class III price. The Class III price for all skim milk and butterfat used to produce (1) any Class III product as defined in §1036.40(c), except butter and nonfat dry milk shall be the basic formula price for the month, and (2) butter and nonfat dry milk shall be an amount computed as follows:"

Proposed by Miami Valley Milk Producers, Milk, Inc., Wayne Cooperative Milk Producers:

Proposal No. 16 - Re 7 CFR Part 1049

Amend §1049.50(b) to read as follows:

"(b) Class II price. The Class II price shall be the basic formula price computed pursuant to §1049.51, except that the price for skim milk and butterfat used to produce nonfat dry milk and butter shall be computed as provided in §1049.50(b)(1), (2), and (3).

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 17

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid specified marketing areas or from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on: February 12, 1974.

U. S. Department of Agriculture

Exhibit No. _____ Docket No. _____

Hearing _____

Offered by _____

Date **FEB 20 1974**

Reporter **ACME REPORTING COMPANY**
8525 Colesville Rd.
Silver Spring, Md. 20910
588-5288

/s/ John C. Blum
 Deputy Administrator
 Regulatory Programs

EXHIBIT X9 - SCHEDULE OF LOSSES IN NUMBER OF PRODUCERS & POUNDS
OF PRODUCTION DURING A 12 MONTH PERIOD FROM OCTOBER, NOVEMBER &
DECEMBER, 1972 TO OCTOBER, NOVEMBER & DECEMBER, 1973, (pp. 930a-932a)
Losses in Number of Producers and Pounds of Production During a 12 Month
Period From October, November and December, 1972 to October, November
and December, 1973.

Federal Order	Loss in	October	November	December	Total
1	Producer Production	363 22,000,000	315 15,000,000	213 15,000,000	52,000,000
2	Producer Production	1483 39,248,897	1607 29,237,113	1478 31,390,402	99,876,412
4	Producer Production	414 4,779,000	406 5,593,772	408 9,076,000	19,448,772
33	Producer Production	532 24,425,052	523 21,149,663	573 24,262,927	69,837,342
36	Producer Production	488 14,379,332	452 9,576,083	359 7,165,516	31,120,931
40	Producer Production	464 20,650,491	453 13,967,840	423 10,701,731	44,420,062
49	Producer Production	143 6,639,869	263 9,128,884	303 10,075,367	25,844,120
TOTAL	Producer Production	3,887 132,122,641	4,019 102,753,355	3,757 107,671,943	342,547,639

Total Producers lost OCT 1972 - Dec 1973

F.O. 1 - 379
2 1854
4 439
33 656
36 557
40 533
49 157
Total 4,575

931a EXHIBIT

ORDER 1001

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	7,120	282,000,000	- 363 Producers
Oct. 1973	6,757	260,000,000	- 22,000,000 lbs.
Nov. 1972	7,047	257,000,000	- 315 Producers
Nov. 1973	6,732	242,000,000	- 15,000,000 lbs.
Dec. 1972	6,954	273,000,000	- 213 Producers
Dec. 1973	6,741	258,000,000	- 15,000,000 lbs.

ORDER 1002

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	23,288	754,437,814	- 1,483 Producers
Oct. 1973	21,805	715,188,917	- 39,248,897 lbs.
Nov. 1972	23,166	706,893,748	- 1,607 Producers
Nov. 1973	21,559	677,656,635	- 29,237,113 lbs.
Dec. 1972	22,912	762,072,632	- 1,478 Producers
Dec. 1973	21,434	730,682,230	- 31,390,402 lbs.

ORDER 1004

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	8,336	377,577,000	- 414 Producers
Oct. 1973	7,922	372,798,000	- 4,779,000 lbs.
Nov. 1972	8,290	364,209,000	- 406 Producers
Nov. 1973	7,884	358,615,228	- 5,593,772 lbs.
Dec. 1972	8,305	386,218,000	- 408 Producers
Dec. 1973	7,897	377,142,000	- 9,076,000 lbs.

ORDER 1033

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	7,933	257,666,098	- 532 Producers
Oct. 1973	7,401	233,241,046	- 24,425,052 lbs.
Nov. 1972	7,872	239,447,543	- 523 Producers
Nov. 1973	7,349	218,297,880	- 21,149,663 lbs.
Dec. 1972	7,850	250,118,070	- 573 Producers
Dec. 1973	7,277	225,855,143	- 24,262,927 lbs.

(con'd)

932a

ORDER 1036

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	8,789	260,373,271	- 488 Producers
Oct. 1973	8,301	245,993,939	- 14,379,332 lbs.
Nov. 1972	8,729	241,620,495	- 452 Producers
Nov. 1973	8,277	232,044,412	- 9,576,083 lbs.
Dec. 1972	8,591	252,625,711	- 359 Producers
Dec. 1973	8,232	245,460,196	- 7,165,515 lbs.

ORDER 1040

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	8,093	336,292,314	- 464 Producers
Oct. 1973	7,629	315,641,823	- 20,650,491 lbs.
Nov. 1972	8,047	310,291,041	- 453 Producers
Nov. 1973	7,594	297,223,201	- 13,067,840 lbs.
Dec. 1972	7,983	321,512,914	- 423 Producers
Dec. 1973	7,560	310,811,183	- 10,701,731 lbs.

ORDER 1049

<u>Date</u>	<u>No. Producers</u>	<u>Production</u>	<u>Change</u>
Oct. 1972	4,312	153,568,684	- 143 Producers
Oct. 1973	4,169	146,928,815	- 6,639,869 lbs.
Nov. 1972	4,434	150,313,731	- 263 Producers
Nov. 1973	4,171	140,316,907	- 9,128,884 lbs.
Dec. 1972	4,458	160,266,255	- 303 Producers
Dec. 1973	4,155	150,190,888	- 10,075,367 lbs.

ESTIMATED FEDERAL ORDER BLEND PRICES USING SNUBBER AND MINNESOTA-WISCONSIN SERIES

FORMULAS AND DIFFERENCES BETWEEN THE BLEND PRICES

FEDERAL ORDER	FORMULA	OCTOBER	DIFFERENCES	NOVEMBER	DIFFERENCES	DECEMBER	DIFFERENCES
1*	SNUBBER	8.89		8.98		8.98	
	M-W	8.98	-.09	25	-.13	9.34	-.36
2	SNUBBER	8.59		8.70		8.54	
	M-W	8.73	-.14	8.97	-.27	9.01	-.47
4	SNUBBER	8.59		8.81		8.24	
	M-W	8.83	-.24	8.35	-.34	8.78	-.54
33*	SNUBBER	8.13		8.81		8.96	
	M-W	8.20	-.07	8.71	-.10	9.19	-.23
36*	SNUBBER	8.17		8.60		8.92	
	M-W	8.27	-.10	8.73	-.15	9.20	-.28
40	SNUBBER	7.70		8.04		8.31	
	M-W	7.92	-.22	8.34	-.30	8.77	-.46

EXHIBIT X10 - SCHEDULE OF ESTIMATED FEDERAL ORDER BLEND PRICES USING SNUBBER & MINNESOTA-WISCONSIN SERIES FORMULAS SHOWING DIFFERENCES IN PRICES BETWEEN FORMULAS TOGETHER WITH SCHEDULE SHOWING LOSSES IN PRODUCED RECEIPTS FOR MILK UTILIZED IN LOWEST CLASS

933a

(pp. 933a-934a)

ESTIMATED LOSSES ON PRODUCER RECEIPTS FOR MILK UTILIZED IN LOWEST CLASS FOR
ORDERS 1, 2, 4, 33, 36, and 40 DURING OCTOBER, NOVEMBER, AND DECEMBER 1973. *

<u>FEDERAL ORDER</u>	<u>OCTOBER</u>	<u>NOVEMBER</u>	<u>DECEMBER</u>	<u>TOTAL</u>
1	\$ 296,061	\$ 453,491	\$ 926,240	\$ 1,675,792
2	1,099,882	4,810,476	3,381,939	6,292,297
4	464,568	770,177	1,458,750	2,693,495
33	165,298	217,036	513,919	896,253
36	240,610	349,543	691,291	1,281,444
40	447,142	654,379	1,217,061	2,318,582
TOTAL	\$ 2,713,561	\$ 4,255,102	\$ 8,189,200	\$ 15,157,863

* Estimated losses include losses on class II and III, if class II price is based on Class III price using Snubber formula

EXHIBIT XII - SCHEDULE OF LOST MARKETS

X-11

EXHIBIT _____

LOST MARKETS

JANUARY 1974

<u>LOADS PER WEEK</u>	<u>MARKET</u>	<u>PRICE</u>	<u>ALTERNATIVE</u>	<u>LOSS</u>
14	A	M-W+.40	-1.40	1.80 cwt.
2	B	M-W+.70	.45	.25
2	C	M-W+.45	.32	.13
7	D	M-W+.45	.35	.10
2	E	M-W+.35	-1.40	1.75
2	F	M-W+.47	.40	.07
21	G	M-W+.40	.25	.15
24	H	M-W+.40	-1.40	1.80
3	I	M-W+.55	.45	.10

77 Loads per week

14,630,000 lbs. per month directly effected

156,994.00 in income equal to 38¢ for all milk in unit

EXHIBIT X18 -

Table 1. Change from 1972 to 1973, in receipts from producers quantity of Class II milk, and milk used to produce powder and butter, Order 2, January - March.

<u>January</u>				
	<u>1972</u>	<u>1973</u>	<u>Change</u>	<u>% Change</u>
Receipts from producers (mil.lbs.)	841.5	795.6		- 5.5
Class II Milk " "	378.6	358.2	-20.4	- 5.4
Skim used for powder " "	64.5	44.6	-19.9	-30.9
Butterfat used for butter (000 lbs.)	2972.5	2075.2		-30.2
 <u>February</u>				
Receipts from producers (mil.lbs.)	808.3	731.5		- 9.5
Class I milk " "	372.1	336.8	-35.3	- 9.5
Skim used for powder " "	66.4	36.5	-29.9	-46.7
Butterfat used for butter (000 lbs.)	2940.2	1513.8		-51.5
 <u>March</u>				
Receipts from producers (mil.lbs.)	913.6	851.6		- 6.8
Class II milk " "	454.1	410.0	-44.1	- 9.7
Skim used for powder " "	89.9	49.7	-40.2	-44.7
Butterfat used for butter (000 lbs.)	3608.4	1655.2		-43.7

Source: Reports of Order 2 Market Administrator

EXHIBIT X18 -

Table 2. Order 2: Total Class II skim milk and butterfat and percentages used to produce powder and butter respectively, by months, 1972.

<u>Month</u>	Class II Skim Milk			Class II Butterfat		
	<u>Total</u>	<u>Used for</u> <u>Powder</u>	<u>% Powder</u> <u>of Total</u>	<u>Total</u>	<u>Used for</u> <u>Butter</u>	<u>% Butter</u> <u>of total</u>
	<u>(million lbs.)</u>			<u>(000 lbs.)</u>		
J	363.5	64.5	17.7	15.2	3.0	19.6
F	357.2	68.4	19.1	14.8	2.9	19.8
M	436.2	89.9	20.6	17.9	3.6	20.2
A	482.7	130.7	27.1	19.4	5.2	26.6
M	536.2	143.6	26.8	21.4	5.4	25.2
J	525.8	156.5	29.8	20.6	5.5	26.7
J	419.9	68.0	16.4	16.4	2.4	14.7
A	383.5	59.3	15.5	15.1	1.6	10.5
S	320.1	42.7	13.3	13.0	1.0	8.0
O	309.6	42.4	13.7	13.1	1.4	10.4
N	282.9	31.7	11.2	12.1	1.2	9.6
D	<u>319.1</u>	<u>48.6</u>	<u>15.2</u>	<u>13.3</u>	<u>1.5</u>	<u>11.1</u>
<u>Total</u>	4731.8	946.3	20.0 ^{1/}	192.3	34.7	18.0 ^{1/}

^{1/} Weighted Average

Source: Reports of the Order 2 Market Administrator

X-24

EXHIBIT X24 - SCHEDULE OF

MINNESOTA-WISCONSIN - BUTTER-POWDER PRICE

WITH COMPARISON OF M.W. TO B.P. 1972-1973

	<u>M.W.</u>	<u>B.P.</u>	<u>M.W. to B.P.</u>
January 1972	\$4.97	\$4.93	+ 4¢
February	4.97	4.94	+ 3¢
March	5.04	4.94	+ 10¢
April	4.96	4.94	+ 2¢
May	4.94	4.94	-0-
June	4.95	4.94	+ 1¢
July	5.01	4.95	+ 6¢
August	5.07	5.04	+ 3¢
September	5.10	5.08	+ 2¢
October	5.18	5.20	- 2¢
November	5.32	5.30	+ 2¢
December	<u>5.41</u>	<u>5.54</u>	- 13¢
(S) Ave.	\$5.08	\$5.06	
January 1973	\$5.43	\$5.57	- 14¢
February	5.45	5.67	- 22¢
March	5.55	5.66	- 11¢
April	5.63	5.71	- 8¢
May	5.66	5.79	- 13¢
June	5.73	5.79	- 6¢
July	5.78	5.92	- 14¢
August	6.38	6.74	- 36¢
September	6.91	7.24	- 33¢
October	7.49	7.02	+ 47¢
November	7.64	6.86	+ 78¢
December	<u>7.94</u>	<u>6.81</u>	+ \$1.13
(s) Ave.	\$6.30	\$6.23	
January 1974	\$8.10	\$6.92	+ \$1.18

Source: Dept. of Agriculture Releases

EXHIBIT X32 - LETTER FROM JOE COTTER TO HARRY C. TRELOGAN
DATED FEBRUARY 22, 1974

February 22, 1974

Mr. Harry C. Trelogan
Administrator
Statistical Research Service
U.S. Department of Agriculture
Washington, D.C.

Dear Mr. Trelogan:

Lehigh Valley Cooperative Dairy of Allentown, Pennsylvania, is an interested party in the present Public Hearing to Amend Class II and Class III Price Provisions of eight marketing orders, which hearing is being held in Washington, D.C.

To date in this Hearing there appears to be some apprehension and questions by some participants concerning the Minnesota-Wisconsin price series.

In a report issued in July 1973 by the Statistical Reporting Service of the U.S. Department of Agriculture entitled "Prices Received by Farmers for Manufacturing Grade Milk in Minnesota and Wisconsin, 1970-72," it is stated that the prices which are reported in the Minnesota-Wisconsin price series "relate only to manufacturing grade milk purchased from farmers."

It is well known that some plants in Minnesota and Wisconsin receive both Grade A milk and manufacturing grade milk--with Grade A milk being utilized wholly, or partly, as fluid milk. Since the Minnesota-Wisconsin price is being described as purely a price for manufacturing grade milk, we request that the Department put into the record of this Hearing a statement by a qualified witness as to what measures are taken to assure that this description is accurate.

We would like to have the Department's witness prepared to answer in his statement, or on cross-examination, such questions as to the following:

1. Are prices paid to any farmers at plants receiving both manufacturing grade milk and Grade A milk included in calculating the Minnesota-Wisconsin price?

2. If prices paid at such plants are included, what steps are taken to assure that income from the fluid milk sales has no influence on the price paid to farmers for the manufacturing grade milk?
3. Is there any procedure for verifying on a regular basis that the prices reported as paid are actually paid?

We hope that our request for the qualified witness will be granted forthwith.

Sincerely,

JOE COTTER

JWC/blc

EXHIBIT X33 - LETTER FROM HENRY C. TRELOGAN TO JOE COTTER
DATED FEBRUARY 26, 1974 (pp. 941a-942a)
UNITED STATES DEPARTMENT OF AGRICULTURE
STATISTICAL REPORTING SERVICE
WASHINGTON, D.C. 20250

941a
X-33

FEB 26 1974

Mr. Joe Cotter
LeHi Dairy
1000-1160 North Seventh Street
Allentown, Pennsylvania 18001

Dear Mr. Cotter:

This is in response to your letter of February 22, 1974, concerning prices received by farmers for manufacturing grade milk in Minnesota and Wisconsin. I will respond to your questions in the order asked.

1. Plants receiving both manufacturing grade milk and Grade A milk are included in the sample of plants drawn for reporting prices paid for manufacturing grade milk. In order to have a statistically representative sample, plants receiving manufacturing grade milk are included in the sample regardless of what other types of milk are received. Response to the mail questionnaire requesting information on quantities received and payments made for manufacturing grade milk is voluntary.
2. No continuing formal steps are taken to assure that income from the fluid milk sales has no influence on the price paid to farmers for manufacturing grade milk. The incoming information from each reporting plant is reviewed in each State Statistical Office by experienced statisticians who are familiar with the operations of the plant and with the market prices of the products produced. We examined the question of differences in paying prices for manufacturing grade milk paid by Dual-Intake and Grade B plants in 1970. At that time, monthly receipts and dollars paid by all plants receiving manufacturing grade milk in Minnesota and Wisconsin were summarized separately for Grade B and Dual-Intake plants with the following results:

Average Prices Paid Per Cwt. for Manufacturing Grade Milk
in Minnesota and Wisconsin by Months-1970, by Kind of Plant

(Price adjusted to 3.5% BF basis)

Month	Minnesota			Wisconsin		
	Grade B Plants	Dual-Intake Plants	Diff. B-DI	Grade B Plants	Dual-Intake Plants	Diff. B-DI
	Dollars Per Hundredweight					
Jan.	4.49	4.47	+0.02	4.70	4.62	+0.08
Feb.	4.48	4.44	+0.04	4.62	4.60	+0.02
Mar.	4.43	4.39	+0.04	4.61	4.57	+0.04
Apr.	4.52	4.49	+0.03	4.61	4.55	+0.06
May	4.54	4.53	+0.01	4.60	4.54	+0.06
June	4.58	4.57	+0.01	4.61	4.53	+0.08
July	4.61	4.59	+0.02	4.61	4.58	+0.04
Aug.	4.60	4.59	+0.01	4.66	4.55	+0.11
Sept.	4.58	4.56	+0.02	4.63	4.55	+0.08
Oct.	4.59	4.56	+0.03	4.70	4.68	+0.02
Nov.	4.63	4.62	+0.01	4.73	4.72	+0.01
Dec.	4.68	4.69	-.01	4.77	4.75	+0.02

The differences that appear in the table can be attributed to the variation that exists in the data, that is, the variability in prices paid by different plants. In most instances, such differences will not be statistically significant. The results of this study satisfied us that the kind of plant had little effect on paying prices for manufacturing grade milk.

3. We have no provision for verifying on a regular basis that the prices reported are actually paid. Response to our requests for information are on a purely voluntary basis. We could not expect to maintain the cooperation of reporters if verification audits were required. As stated in question 2, the reports as received from the reporting plants are reviewed currently by statisticians with long experience with dairy statistics. Radical changes from known conditions are checked for possible errors.

Your request for a witness to answer further questions is respectfully declined at this time. The qualified employees are located in field offices which precludes immediate appearance. To properly prepare testimony, it will be necessary for us to make a study similar to the study cited earlier. Such a comparison would require considerable amounts of hand-sorting of data from monthly and annual reports for a large number of plants. Preparation of the requested information and a witness for testimony would entail a period of approximately two months.

Sincerely,

Harry C. Trelogan

HARRY C. TRELOGAN
Administrator

EXHIBIT X40 - ANALYSIS OF MANUFACTURING GRADE MILK PRICES IN
MINNESOTA AND WISCONSIN AND VARIOUS MEASURES OF MANUFACTURING
MILK VALUES (JULY 1968) (pp. 943a-1060a)

July 1968

No. 23

ANALYSES OF MANUFACTURING GRADE MILK PRICES IN
MINNESOTA AND WISCONSIN AND VARIOUS MEASURES
OF MANUFACTURING MILK VALUES

BY

TRUMAN F. GRAF
Department of Agricultural Economics
University of Wisconsin
AND

JEROME W. HAMMOND
Department of Agricultural Economics
University of Minnesota

U. S. Department of Agriculture	
Exhibit No. <u>40</u>	Docket No. <u>AD-14-A53</u>
Hearing <u>MILK in Boston</u>	
Offered by _____	
Date <u>FEB 28 1974</u>	
Reporter <u>ACME REPORTING COMPANY</u>	
<u>8525 Colesville Rd.</u>	
<u>Silver Spring, Md. 20910</u>	
<u>588-5200</u>	

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P R E F A C E

This research study relating to manufacturing grade milk prices in Wisconsin and Minnesota, and various measures of manufacturing milk values, was conducted jointly by the University of Wisconsin and the University of Minnesota, with the assistance and cooperation of the Consumer and Marketing Service, and Statistical Reporting Service of the United States Department of Agriculture; the Wisconsin State Department of Agriculture; and the Minnesota State Department of Agriculture.

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However, the findings of the study are the authors own, and they alone assume responsibility for them.

SUMMARY AND CONCLUSIONS

- (1) Several measures of manufacturing milk values have been developed by the U. S. Department of Agriculture. Some are competitive pay price series based on prices reported by dairy plants, and others are based on product prices, product yields, and estimates of processing costs.

Competitive price series tend to assure an equitable cost situation between plants under the Federal Milk Order Program and plants not under this program. Competitive price series are responsive to costs of processing inputs other than milk, and to changing technology. Product price formulas do not automatically make this response.

The main advantage of the product price formulas is ease of calculating the value. Over time however, product price formulas used in Federal order pricing that have not been updated have tended to provide for a lower price for surplus milk than have competitive pay prices.

Although product price formulas and competitive pay price series differ in mechanics, certain problems are common to both measures. Both measures represent a single price--generally an average. This means efficient plants can afford to more than the average, while inefficient plants can afford to pay less. In some instances, paying an average "series" price may result in substantial profits for some plants and causes other plants to operate at a loss.

In recent years there has been a shift in emphasis from the use of product price formulas to competitive pay price formulas in Federal milk orders pricing provisions. Because of the complexity of the issues involved in surplus milk pricing, and the fact that there are important advantages and disadvantages for both methods, depending on marketing conditions and circumstances in particular markets, great care should be exercised by the USDA in deciding on the type of surplus milk pricing for any market. The situation in the particular market should determine the type or combination of types of surplus milk pricing formulas. However, where product price formulas are used, special effort should be made to keep cost allowances up-to-date and and reflective of competitive values for manufacturing milk.

- (2) The Minnesota-Wisconsin price series which is representative of prices paid farmers for about one-half the manufacturing grade milk sold in the U. S., is one of the most widely used measures of milk values in the country. It is used in establishing Class I prices in all but the six New England and Mid-Atlantic Federal order markets. It is likewise a factor in determining surplus Class prices in more than one-half the Federal order markets, and the number is continuing to grow. It is also used throughout the industry as a base indicator of changes in milk values.
- (3) For the 65 month period, August 1961-December 1966, the difference between the announced estimates of the Minnesota-Wisconsin price and the final averages of prices reported paid at all manufacturing plants in the two States averaged 0.9 cents per hundredweight for milk testing 3.5 percent butterfat. This close relationship between the announced price and the average of prices paid at plants handling manufacturing milk in the two States indicates that the Minnesota-Wisconsin series is quite representative of the average of reported prices for the two States.

- (4) The average "overstatement" of milk prices, because of understanding butterfat tests, was 4.4 cents per hundredweight in 26 representative Minnesota plants surveyed, 3.8 cents per hundredweight in 26 representative Wisconsin plants, and an average of 4.1 cents per hundredweight for the 52 Minnesota and Wisconsin plants, combined. Discrepancies exist between the amount of butterfat plants purchase from the farmers, and the amount of butterfat they pay farmers for. The reason may be dishonesty, or that the highly technical nature of determining fat content results in a high potential for error, or both.

Hauling subsidies resulted in an understatement of 1.4 cents per hundredweight in reported prices, and cash dividends resulted in an understatement of 2.1 cents per hundredweight in reported prices for the two states combined.

Thus, on the average, reported prices paid by these 52 plants exceeded actual prices paid, by .6 cents per hundredweight.

- (5) Twenty-five of the 26 plants in each State (50 of 52 in the two States), paid for less butterfat than they received from farmers, and, therefore, quoted higher prices than were actually paid.

Average understating of butterfat tests for sample plants was 1.76 percent in Minnesota, 1.38 percent in Wisconsin, and 1.56 percent in the two States combined.

Low paying plants in each State understated butterfat tests to a larger extent than did the higher paying plants--1.94 percent for low paying plants compared to 1.42 percent for the high paying plants, in the two States combined. Accordingly, low paying plants overstated their price more than did the high paying plants--5 cents per hundredweight for low paying plants compared to 3.9 cents for high paying

plants in the two States combined. Thus, upward bias in reported farm milk prices was not due to greater overstatement of price by high paying plants than by low paying plants. Instead, the opposite situation prevailed.

- (6) Classification of cooperative dividends by milk pay price groups for the 52 plants surveyed indicated the lowest pay price group in the two States paid the largest cash total dividends per hundredweight; 3.7 and 9.6 cents respectively. This was more than one cent per hundredweight above the high price group.
- (7) Survey plants with highest pay prices in the two States combined were making a small profit on hauling. As a result of this profit on hauling, high paying plants were paying farmers .3 cents per hundredweight lower actual prices than were being quoted. Plants with lower prices had losses on hauling and were, therefore subsidizing hauling. As a result of this subsidization of hauling, low paying plants were paying an average of 2.3 cents per hundredweight higher actual prices than were being quoted.
- (8) A principal factor influencing manufacturing milk prices paid farmers by plants is the proportion of gross income derived by plants from specific manufactured products. Therefore, there is no assurance a price series reflecting prices at plants manufacturing various products will accurately reflect prices that plants manufacturing a particular product can afford to pay.

- (9) The high and middle pay groups had the highest percent of capacity utilized--26 percent, compared to 17 percent for the low paying plants. A relationship existed between plant pay prices and utilization of plant capacity--the higher the percent of capacity utilized the higher the pay price.
- (10) High paying plants had lower profits than low paying plants. Specifically, high paying plants in the group of 52 plants surveyed had average plant profits of 3.5 cents per hundredweight, and total profits (including outside income of 9.6 cents per hundredweight. These profits were about one cent lower than those of low paying plants.
- (11) High paying plants had lower depreciation reserves than lower paying plants. Depreciation set aside for high pay plants was 3.6 cents per hundredweight compared to 5.3 cents per hundredweight for low paying firms. Depreciation set aside as a percent of fixed assets was 5.9 percent for high paying plants, and 6.2 percent for low plants.
- (12) High pay plants generally are less financially stable than lower pay plants. For example, the average equity ratio (total equities divided by total assets) was 63.1 for high paying plants, and 75.0 for low paying plants.
- (13) High pay butter plants had a six cent per hundredweight lower total expense than low pay butter plants. High pay butter-powder plants had a 19 cent per hundredweight lower expense than low pay butter-powder plants. However, high pay cheese plants had a seven cent per hundredweight higher cost than low pay cheese plants.

The lack of a normal cost-price relationship in cheese plants may be explained by the diversity in types and styles of cheese, with resulting differences in costs and returns.

On the basis of data from the plants surveyed, it cannot be argued that high cost plants are driving up pay prices. Instead high cost plants generally have lower pay prices than do low cost plants.

- (14) In several Federal order milk markets where facilities are available for making only one manufactured product, the competitive price series for surplus milk is modified through the use of a "snubber" (based on butter-powder product prices). If the manufacturing series price exceeds the snubber price, the snubber becomes the pricing factor. Although the snubber provides relief for butter-powder plants during the periods when significant differences between the Minnesota-Wisconsin prices and butter-powder product values prevail, there is some question as to whether the snubber carries out the surplus pricing objective of providing the highest possible returns to producers. Care should be taken to see that the snubber formula is realistic and up-to-date in terms of processing cost allowances.

- (15) More accuracy in calculation of competitive manufacturing milk pay prices, and greater acceptability of these prices in Federal order surplus milk pricing could result from the following:

- (a) More detail could be reported for price series which are used for various regulatory programs. Average hauling subsidies, separate can and bulk milk prices, some estimate of average cash dividends, and average butterfat differentials would be useful.
- (b) The "All Manufacturing" U. S. milk price series could be substituted for the 3-product U. S. manufacturing price series. They yield approximately the same price. However, the "All Manufacturing" price series has a broader coverage.

- (c) A cheese, and butter-powder, breakdown of the Minnesota-Wisconsin series could make it a more acceptable series in Federal order pricing. It would provide the incentive for shifts from cheese to butter-powder, or butter-powder to cheese, when product prices change their relative levels, and, in addition, would overcome the objection that regulated Federal order handlers are required to pay more for milk used in manufactured dairy products than non-Federal order manufacturing milk plants.
- (d) Additional resources should be devoted to the State's programs for assuring accurate weighing, testing, and reporting of milk purchases and sales. The number of plants involved, and the highly technical nature of accounting for purchases and sales, require more resources than the States currently are able to devote to the programs.
- (e) A Federal order for manufacturing grade milk would make possible a more comprehensive program of butterfat and weight verification.

OBJECTIVES OF THE STUDY

This study was designed to evaluate various measures of manufacturing milk values in pricing milk used to make manufactured dairy products. Particular attention is devoted to manufacturing milk values in Minnesota and Wisconsin.

Specific objectives of the study are:

1. Evaluate various measures of manufacturing milk values.
2. Ascertain if reported pay price series accurately reflect the average of reported prices for the universe they represent.
3. Ascertain and measure differences that may exist between milk prices actually paid by dairy plants for manufacturing grade milk, and the prices reported as paid.
4. Determine the relationship between certain market and operating variables for milk plants, and the prices paid by these plants for manufacturing grade milk.
5. Describe and evaluate those aspects of the trade practice programs of the Minnesota-and-Wisconsin State Departments of Agriculture which concern the accuracy of accounting for milk purchased by plants and reporting plant information.
6. Consider the implications of various measures of manufacturing milk values with respect to establishing surplus class prices in Federal order milk markets.

CHAPTER I

METHODS USED TO OBTAIN VALUES OF MANUFACTURING MILK

Pricing Milk Used in Manufacturing Dairy Products
in Federal Order Markets

Federal milk orders encourage an adequate supply of fluid milk to meet market needs, and maintain and promote orderly marketing in the public interest. These functions are accomplished in part through the classified pricing and pooling plans which are applied under the orders.

Some reserve supply is necessary and desirable to insure an adequate supply of milk. In addition to day-to-day and seasonal variations in deliveries from producers, purchases of milk by consumers show considerable variation from day-to-day and from month-to-month. Because of these variations, reserve supplies of milk are a necessary and inevitable part of the milk supply of any fluid milk market. These reserve supplies are commonly referred to as "daily reserve" and "seasonal reserve". The extent of these reserves may vary considerably from market-to-market, depending upon differences in milk production and consumption patterns, market organization, and the extent of the marketing area, and how well the available supplies are distributed over the market in accordance with individual plant needs for fluid milk. The presence of these price-depressing reserves is a basic reason for the application of the classified price plan in fluid milk markets.

A major function of Class I prices is encouraging an adequate supply of milk. A major objective of surplus pricing is to assure the orderly marketing of the reserves associated with an adequate supply. An equally

important objective of surplus pricing is to promote the utilization of available supplies of milk in those uses which will provide the highest possible return to producers, consistent with cost-price relationships for manufactured products.

The problem of surplus milk pricing is one of providing for orderly disposition of surplus for the short-run as well as the longer time spans. This means that at any given time the price must be at a level which will provide manufacturing outlets for the surplus milk. In the long-run, an attempt should be made to obtain prices at the highest level which is consistent with the maintenance of adequate manufacturing resources for the disposition of such surplus in regulated markets. Variation in quantities of surplus available, regularity of deliveries, institutional factors, products manufactured, and plant efficiency may, at any given time, result in differences in the net returns on milk for manufacturing, among plants in the same market or among markets.

Reserves are marketed in the form of ice cream or cottage cheese--so-called soft products--or in the form of products such as butter-powder and cheese. These products are sold in local or distant markets, sometimes in competition with products processed from manufacturing grade milk, especially with respect to butter-powder and cheese. In establishing a price for surplus milk in a fluid milk market, an important determination is the price being paid to farmers by the competitors of handlers of surplus milk in fluid markets. The general level of competitive prices paid producers at unregulated manufacturing plants is regarded as an indication of the appropriate level for surplus milk prices, in the absence of a clear indication that such prices are not reasonable.

The Nourse Committee in its 1962 report on the Federal order program summarized the objectives in pricing surplus milk as follows: "While pricing surplus milk to avoid 'homeless' milk, extreme care must be exercised to price such milk so that (a) surplus handling is not so profitable as to encourage bringing more milk into the market in order to increase handler profits, (b) surplus is not withheld from Class I usage when needed, and (c) unstabilizing effects upon the markets of producers of manufacturing milk are avoided."^{1/}

A surplus milk price which will accomplish these objectives requires a careful appraisal of the factors which influence the market for manufacturing milk and the level of surplus prices in Federal orders.

The level of surplus milk prices should be such as to lead to the manufacture of available reserve supplies of milk, but the price should not be so low as to attract Grade A milk to be used only for manufacturing. Surplus milk prices which are established at too low a level over a period of time can be especially disturbing to the marketing structure, particularly under a marketwide pool. If priced too low, a chain of events will follow which is not in the interest of producers or consumers. Should manufacturing milk prices be so low that more than normal profits are obtained in utilizing market reserves, handlers and producer cooperatives will attempt to develop market milk supplies solely for manufacturing. New plants and new producers will be attracted to the market for this purpose alone.

These developments dissipate the higher value contributed to the pool by fluid sales. Class I prices which are higher than are necessary to attract an adequate supply of milk to the market, of course, will greatly

^{1/} Report to the Secretary of Agriculture by the Federal Milk Order Study Committee, December 1962, p. 26.

accelerate these developments. In any event, the depressing of the blend price to producers as more manufacturing milk comes to the market naturally causes them to seek even higher Class I prices in order to maintain blend prices.

Low order surplus prices may create other problems. Manufactured dairy products for which surplus Grade A milk is used compete for an outlet with products made from manufacturing grade milk. If order surplus prices in a given market or markets are too low in relation to prices paid for manufacturing grade milk, regulated handlers are given a competitive advantage. Also, while handlers are not likely to deprive their established buyers of fluid milk in favor of manufacturing milk outlets, some plant operators may be reluctant to release supplies of milk to their competitors for fluid use if margins provided for handling surplus milk are unreasonably high.

If the price of surplus milk is so high that handlers are unwilling to receive it, some of the disorderly marketing conditions orders are intended to eliminate are encouraged. For example, too high a level of surplus prices may result in difficult problems for cooperatives particularly in markets where there are a significant number of nonmember producers. If proprietary handlers reject milk of member producers, it must be handled by the cooperative. If the surplus price is too high, cooperatives cannot handle surplus milk except at a financial loss, so that cooperative producers are penalized relative to non-cooperative producers in the market.

Two types of formulas are used for pricing surplus milk used for manufacturing purposes in Federal orders. The two types are: (a) Product price formulas calculated by multiplying prices for the products, such as butter, nonfat dry milk, and cheese, by yield factors, then deducting a manufacturing allowance and (b) formulas based on prices paid at unregulated manufacturing plants--commonly called "competitive pay price series" such as the "Midwest Condensery" price, "Local Plant" averages, "U. S. Average '3-product' manufacturing grade milk" price, and the "Minnesota-Wisconsin" price.

Although both types of formulas are used for pricing surplus milk in markets operating under Federal orders, there has been a shift in emphasis from the use of product price formulas to competitive pay price formulas, and particularly to the Minnesota-Wisconsin price. The Midwestern Condensery price and local plant averages have also declined in importance. Table I-1 lists the pricing factors used for surplus class pricing in Federal order markets in December 1956 and October 1967. A competitive pay price series was used as a factor in pricing surplus milk in 81 percent of the Federal order markets in 1967.

Competitive Pay Price Series

Midwestern Condensery Price Series

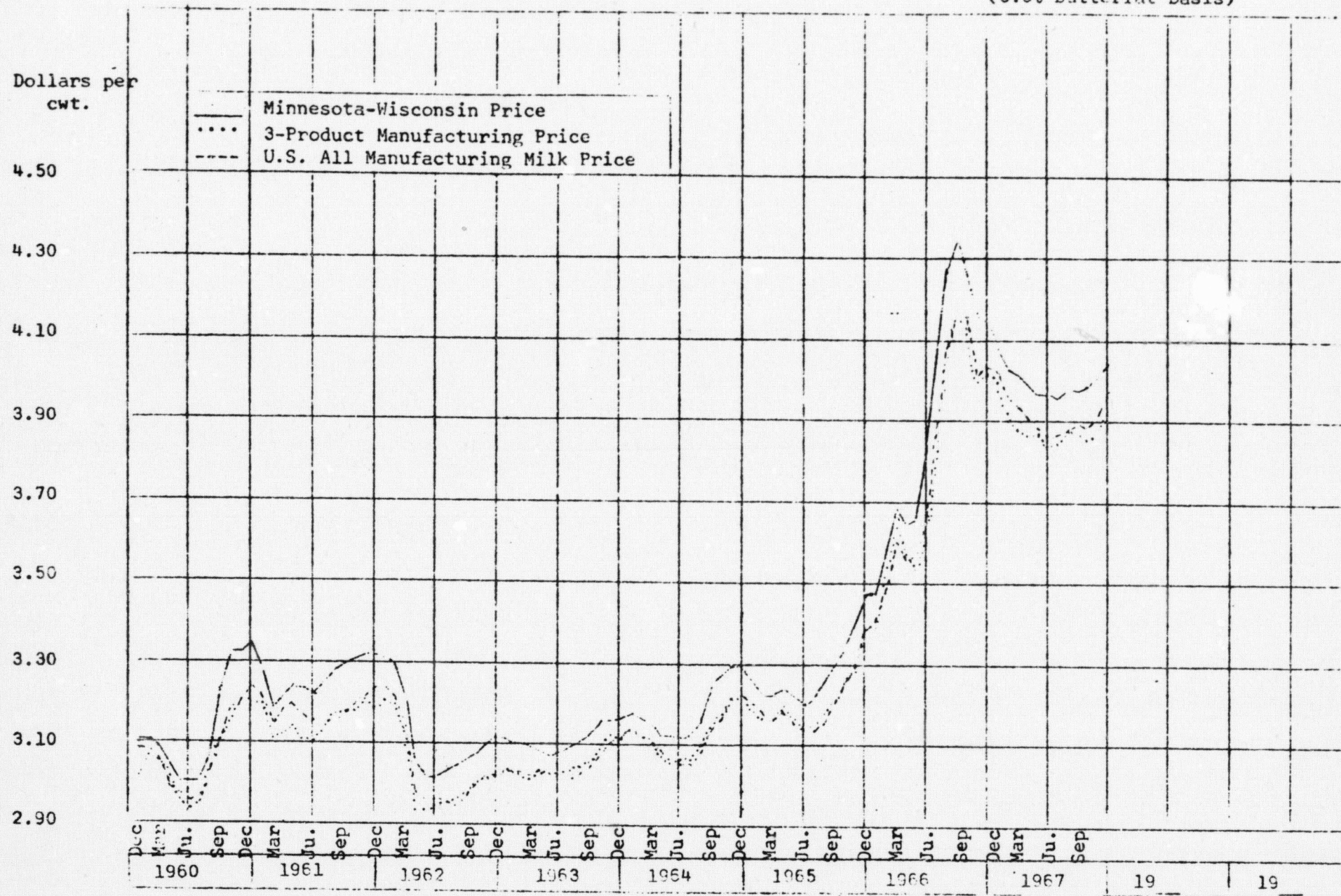
The first competitive pay price series to be used in Federal order markets for pricing milk for manufacturing use was the "18 Condensery" or "Midwestern Condensery" price series. The amended Chicago order, effective July 1, 1940, provided for the pricing of milk used in Class III (evaporated and condensed milk) on the basis of the average prices reported paid by

Table I-1. PRICING FACTORS USED FOR SURPLUS CLASS PRICING IN FEDERAL ORDER MARKETS
December 1956 - October 31, 1967

Pricing Factors	Number of markets		Number of markets as percent of total	
	1956	1967	1956	1967
Minnesota-Wisconsin price only	0	31	0	42
3-Product (U.S. Mfg.) price only	0	8	0	11
Local Plant price only	11	0	16	0
Product price:				
One	16	10	24	14
More than one	4	4	6	5
Minnesota-Wisconsin price in conjunction with:				
Another competitive pay price	0	2	0	3
Product price	0	15	0	20
Other competitive pay price(s) and product price(s)	<u>37^{a/}</u>	<u>4</u>	<u>54</u>	<u>5</u>
TOTAL NUMBER OF FEDERAL ORDER MARKETS	68	74	100	100

^{a/} The Midwestern Condensery price was used as the competitive pay price factor in 10 orders. It was used as one of the competitive pay price factors in another 8 orders.

Figure I-1. Monthly Milk Prices: 3-Product Price, U.S. All Manufacturing Price, Minnesota-Wisconsin Price
1960-1966
(3.5% butterfat basis)



18 specified evaporated milk plants located in the supply area of the Chicago market. Thirteen of these plants were in Wisconsin and five in Michigan. Effective September 6, 1940, the Chicago order was amended to also provide for the use of the Midwestern Condensery price as one of the alternative basic formula prices for establishing Class I and surplus class prices.

With respect to Class I pricing, as of December 1956 the Midwestern Condensery price was used directly or indirectly as an element in 51 of 68 markets. It was used as the factor or one of several alternative factors in pricing surplus milk in 18 markets. However, as of October 31, 1967, no markets were using the Midwestern Condensery average as an element in Class I pricing and only two orders were using it as a factor in pricing surplus milk.^{2/} The decline in this series as a pricing factor is due in part to the relatively small number of plants now available to report prices. For example, the number of plants or places used to establish prices in the series has now dwindled to five. As a result, it is a less satisfactory indicator of manufacturing milk values than it once was. Another factor contributing to the decline in the use of this series was the wide and fluctuating disparity between prices paid at Michigan and Wisconsin plants.

Local Plant Averages

Another method used as a basis for establishing surplus milk prices is to use prices paid for milk at milk manufacturing plants in or near the supply area of the regulated market. This procedure relates order

^{2/} In both of these markets, a hearing has been held to consider deleting the Midwestern Condensery average.

surplus prices to the local competitive value of manufacturing grade milk. Local plant averages have been used largely in markets where there were enough local plants receiving manufacturing grade milk to provide an adequate measure of value. However, an extensive and, in some cases, complete conversion to Grade A has taken place in many areas, the number of plants processing manufacturing grade milk has declined substantially so that it is increasingly difficult to find an adequate number of plants to include in a Local Plant series in most markets. As of October 1967, only five orders included a Local Plant average as an alternative surplus pricing factor.

U. S. "3-Product" Manufacturing Grade Milk Price^{3/}

The so-called U. S. "3-Product" price was developed in 1949 by the Statistical Reporting Service of USDA. This price is derived by weighting together the U. S. average price paid farmers for manufacturing grade milk used for butter and by-products, American cheese, and canning (evaporated milk) according to the quantities of milk used in each of these utilizations each month. Weighted average butterfat tests of such milk are also calculated.

This price was used in determining the parity equivalent of U. S. manufacturing grade milk for about 13 years--until November 1962. Since then the U.S. manufacturing grade milk price has been used for that purpose.

3/ This series is officially designated the U. S. Average Price Received By Farmers for Manufacturing Grade Milk Used for American Cheese, Evaporated milk, and Butter and By-Products and will be referred to in the remainder of the report as the U. S. 3-product price.

In 1951, the 3-product price was adopted as an alternative factor in pricing Class II milk in the New England Federal order markets. As of October 31, 1967, this series, subject to seasonal adjustments, was being used as the sole factor for pricing surplus milk in six Northeastern and Mid-Atlantic orders, the Oklahoma Metropolitan and Red River Valley orders, and as an alternative factor in the Neosho Valley market.

U. S. Manufacturing Grade Milk Price^{4/}

This series is quite similar to the 3-product price. Both series are developed by the Statistical Reporting Service of USDA from similar basic data obtained from plants on similar questionnaires. However, the values of manufacturing grade milk in all manufactured dairy products are reflected in the U. S. manufacturing milk price series.

The U. S. 3-product price and U. S. manufacturing grade milk price generate prices that are in close relationship. During the last six years, the annual average price of both series was the same during three years, differed by one cent in two years, and differed by three cents in one year. (See Table I-2)

Table I-2. Annual Average U. S. Manufacturing Milk Prices, 1962-67.^{a/}

Year	U.S. 3-Product Price	U.S. Manufacturing Grade Milk Price
Dollars per cwt. of 3.5 percent milk		
1962	3.02	3.03
1963	3.05	3.04
1964	3.12	3.12
1965	3.20	3.20
1966	3.79	3.79
1967	3.98	3.91

^{a/} Preliminary.

^{4/} This series is officially designated the U.S. Average Price Received by Farmers for Manufacturing Grade Milk, and will be referred to in the remainder of the report as the U.S. manufacturing grade milk price.

The principal use of the U. S. manufacturing grade milk price is in calculating the parity equivalent for manufacturing milk. It is not used in Federal orders. Since the U. S. manufacturing grade milk price series is more comprehensive than the U. S. 3-product series the manufacturing grade milk price series is recommended for use in Federal order pricing formulas. The existence of two so nearly identical price series is confusing and serves no useful purpose. The manufacturing grade milk price series could serve alone.

Minnesota-Wisconsin Price^{5/}

This series was developed to replace the Midwestern Condensery price in pricing milk under Federal orders, and was first adopted under the Chicago order in September 1961.

This price is now one of the most widely used measures of milk values in the country and reflects the prices paid farmers for about one-half the manufactured grade milk sold in the United States. It is now used in establishing Class 1 prices in all but the six New England and Mid-Atlantic markets. It was included in the surplus class pricing formula in 48 of the 74 orders in effect as of October 31, 1967, and the number is continuing to grow. It is also used throughout the industry as a basic indicator of changes in milk values. (A description of the series, prepared by the Statistical Reporting Service (SRS), appears in Appendix 1, and a discussion of the procedure for converting price at average test to price at 3.5 percent appears in Appendix 2.)

^{5/} This series is officially designated Prices Received by Farmers for Manufacturing Grade Milk in Minnesota and Wisconsin and will be referred to in the remainder of the report as the Minnesota-Wisconsin Price.

A comparison of the two U. S. manufacturing milk price series and the Minnesota-Wisconsin price series by months for 1960 through 1967 is presented in Figure I-1. It shows that the Minnesota-Wisconsin series is consistently above the two U. S. price series. For the period 1960 through 1967, it averaged 8.1 cents per month above all U. S. Manufacturing Milk price series.

The monthly movements in all three price series are very similar. This similarity is to be expected since all three series are heavily weighted by data from Minnesota and Wisconsin plants. These two States account for over one-half of the manufacturing grade milk in the country.

Product Price Formulas

At one time or other during the early period of the milk order program, all of the orders used, at least as an alternative, a product formula in pricing surplus milk. On December 1, 1956, 84 percent of the Federal milk orders used a product price formula as a factor for pricing surplus milk. As of October 31, 1967, 19 percent of the markets used one or more than one product formula for pricing surplus milk and 25 percent used a product price formula in conjunction with a competitive pay price. Present product price formulas are based primarily on butter-powder values. Four orders use a Cheddar cheese formula.

As noted earlier, product formulas use market prices for one or more products multiplied by product yields, less operating costs to obtain an estimated value for 100 pounds of milk of a specified butterfat test manufactured into specified products. For example, the butter-powder formula used in the Kansas City, Northern Louisiana, Puget Sound, and Wichita markets is as follows: The price per pound of Chicago 92-score butter multiplied

by a yield factor of 4.2, plus the price per pound of Chicago area spray powder multiplied by a yield factor of 8.2, minus a handling allowance of 48 cents.^{6/} Assuming a butter price of 66.5 cents per pound and a powder price of 19.6 cents per pound--(the CCC purchase prices used to achieve dairy price support level which was effective for the period June 30, 1966-March 31, 1968,)--a surplus milk price based on this formula would equal \$3.92.

$$(66.5 \text{ cents} \times 4.2) + (19.6 \text{ cents} \times 8.2) - 48 \text{ cents} = \$3.92$$

Yield factors and handling allowances in surplus pricing formulas vary from market-to-market.^{7/} Handling allowances do not vary as much as is suggested in the various formulas. For example, the butter-powder formula for the Fort Wayne, Indianapolis, Miami Valley, and Southern Michigan markets is as follows: The price per pound of Chicago 92-score butter, minus a handling allowance of 3 cents, multiplied by a yield factor of 4.2, plus the price per pound of Chicago area spray powder, minus a handling allowance of 5.5 cents, and multiplied by a yield factor of 8.2, plus 10 cents. Using the same butter price of 66.5 cents per pound and a powder price of 19.6 cents per pound as in the Kansas City etc. markets, results in a formula value of \$3.92, the same as that obtained from the Kansas City type formula.

$$(66.5 \text{ cents} - 3 \text{ cents}) \times 4.2 + (19.6 \text{ cents} - 5.5 \text{ cents}) \times 8.2 + 10 \text{ cents} = \$3.92$$

Confusion would be avoided if the Department of Agriculture expressed formulas more uniformly.

6/ The respective yields are from 100 pounds of 3.5 percent milk.

7/ See tables in USDA publication, "Summary of Major Provisions in Federal Milk Marketing Orders," January 1, 1967, pp. 72 and 73.

CHAPTER II

CONSIDERATIONS INVOLVED IN SELECTING A FORMULA
TO MEASURE MANUFACTURING MILK VALUES

There are a number of important considerations involved in selecting the type of formula to be used in pricing surplus milk. Experience with both competitive pay prices and product price formulas reveals significant and distinctive features for each method. Certain features of each method can be categorically identified as advantages and others as disadvantages. Controversy exists, however, concerning the merits or significance of other features. The controversy exists in part because of a difference of opinion as to whether the surplus pricing formula should reflect what a plant of average efficiency can afford to pay, or what prices are actually being paid.

The following discussions sets forth considerations to be taken into account in selecting a surplus pricing formula.

Product Price Formulas

Important considerations pro and con with respect to the use of product price formulas are:

1. If realistically set up, they are easily understood. They involve the use of the same factors which the plant operator considers in calculating what he can pay for milk before making adjustment for the general competitive situation. The various factors may be discussed at Federal order public hearings on the basis of day-to-day operating experience.

2. The use of a product price formula makes it possible for plant managers to ascertain readily and quickly the cost of milk going into manufacturing. Yield factors and handling allowances are not changed, except if amended after a hearing. Thus, the only variables are the product prices, and these can be readily obtained from published daily, weekly, or monthly quotations.

3. Product price formulas can be designed which will tend to reflect average competitive pay prices over a period of time. Continual updating of cost factors in formulas is required, however, to achieve this.

4. The easy availability of product prices makes this a relatively inexpensive method of obtaining estimates of manufacturing milk values.

5. Product price formulas reflect values of manufacturing milk in a particular use, such as butter-powder, which are independent of short time competitive forces, such as result when prices for major manufactured products are not in normal relationship to one another.

6. Product price formulas are based on the assumption that production of products and sales take place simultaneously. A short period of time elapses between the time products are manufactured and the time they are marketed. For this reason, in periods of rapidly changing prices, product formulas may yield prices which slightly understate or overstate the value of milk utilized. Over time, however, these differences tend to be offsetting.

7. Determination of proper yield factors and processing allowances and product prices may be difficult. It has been difficult at public hearings to get evidence as to manufacturing costs, in part due to wide variations which exist in plant costs. This is the most significant shortcoming of the product formula approach. (For an example of the variations that exist in plant costs see table IV-14.)

Various methods of allocating costs, varied product mixes in plants, and variations in costs because of differences in plant efficiencies, all result in different estimates of processing costs. This makes it difficult to arrive at a formula that results in a price that a plant of average efficiency can afford to pay. Also, there is some difference in yields and prices received for products manufactured f.o.b. the plant.

8. Product price formulas do not automatically reflect changes in processing technology. In the past, changes in processing cost have been incorporated into the processing allowance only through the hearing process. Experience has indicated that often times product formulas which at one time accurately reflected the value of milk for manufacture may get seriously out of line because of changes in manufacturing technology.

For example, the Chicago Class IV (butter-powder) formula at the time it was put in the Chicago order in 1950 accurately reflected prices paid at Wisconsin plants for butter-powder. By 1955, it was running about five cents lower than the Wisconsin creamery pay price, and by 1960 was 21 cents lower. This occurred because the formula was not changed to reflect reductions in manufacturing costs during

this period. As will be noted in Chapter V, the same situation has developed in the butter-powder formula which is now used as a snubber to the Minnesota-Wisconsin price.

9. The value of minor by-products are not now included in product formulas in Federal milk orders. Variation in some by-product returns are such that at times these by-products return a profit, and at other times a loss is incurred. Buttermilk and dry buttermilk in a butter-powder operation, and whey in a cheese operation are such by-products. At times, these products can be profitable to the extent of making the difference between a profit or loss on the entire operation. For example, cheese factories can frequently net several cents per hundredweight on the sale of whey, at other times a loss can be incurred. Consideration should be given to constructing product formulas which reflect values of by-products, particularly in the case of cheese.

10. Product formulas generally reflect the value of milk in a single manufacturing use, i.e., butter-powder or cheese. At times when cheese prices are out of line with butter-powder prices, a butter-powder or cheese milk formula will not reflect accurately the average value of milk for manufacturing.

Competitive Pay Price Formulas

The following considerations pro and con are important with respect to the use of competitive pay price formulas:

1. In the existing highly competitive dairy industry, average

prices which are paid in the areas where there is a substantial competition for manufacturing milk, provide a good measure of its average value. Such prices can be defended on the basis that they reflect competitive values and are an average of prices actually reported paid.

2. Increasing labor and other costs may tend to reduce prices paid farmers for milk. On the other hand, the use of new assembling, processing, packaging, and marketing techniques which reduce plant operating costs, will tend to increase prices paid to producers. These changes in processing costs are directly and automatically reflected in reserve milk prices when based on average competitive pay prices. Similarly, changes in product values and yields are also automatically reflected. Thus at any given time, competitive pay prices reflect the full value of milk for basic manufacturing uses.

3. The competitive price series tend to reflect the return from all products manufactured from milk, including the minor by-products.

4. The competitive price series has the advantage of eliminating the need to calculate processing margins. Since adjustments in handling margins are automatically reflected, they do not become the subject of controversy at public hearings.

5. The competitive pay price series tend to reflect over-all manufacturing milk values rather than values in a particular use. In Federal order markets with facilities for making alternative manufactured dairy products, the use of these series provides the incentive for needed resource adjustment. This is illustrated by

Table II-1. The Proportion of Butterfat in Surplus Milk Utilized by Chicago Order Handlers for use in Butter, Cheese, and other Manufactured Products, 1964, 1965, and 1966 ^{1/}

	BUTTER	CHEESE	OTHER
	Percent of Total	Percent of Total	Percent of Total
<u>1964</u>			
January	64.8	17.8	17.4
February	63.7	18.0	18.3
March	64.7	17.1	18.2
April	65.9	16.1	18.0
May	63.4	17.2	19.4
June	61.5	16.7	21.8
July	57.9	15.9	26.2
August	58.0	14.5	27.5
September	52.2	17.6	30.2
October	53.6	22.0	24.4
November	57.8	19.3	22.9
December	59.4	19.0	21.6
Year	61.0	17.6	21.4
<u>1965</u>			
January	63.2	16.9	19.9
February	62.1	16.5	21.4
March	63.2	16.2	20.6
April	55.4	18.8	25.8
May	58.2	16.8	25.0
June	55.2	17.0	27.8
July	48.7	19.2	32.1
August	43.1	22.3	34.6
September	34.8	24.6	40.6
October	42.5	25.1	32.4
November	39.5	26.7	33.8
December	47.1	25.9	27.0
Year	53.4	19.6	27.0
<u>1966</u>			
January	50.8	24.8	24.4
February	41.6	32.6	25.8
March	46.6	26.9	26.5
April	51.1	23.6	25.1

^{1/} The Chicago order was terminated in 1966.

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the Chicago market which used the Minnesota-Wisconsin price series for pricing surplus milk. In the latter part of 1965 and early 1966, cheese prices rose relative to butter and nonfat dry milk prices. As a result, there was a shift in utilization of surplus milk from butter to cheese during these changes in relative prices (see Table II-1). The percentage of surplus milk used in cheese in the Chicago market about doubled from 16.5 percent in February 1965 to 32.6 percent in February 1966.

6. The competitive price series tend to put regulated plants on an equal basis with non-regulated plants as far as the cost of milk for manufacturing is concerned. This is in contrast to one of the often voiced criticisms of the use of product formula prices in that they allow regulated plants to buy milk for manufacturing uses at lower prices than non-regulated plants which must pay a competitive price. Regulated plants sell the manufactured dairy products on the nationwide market for these products at the same price as non-regulated plants. Thus, lower raw material prices can provide an advantage to regulated plants over non-regulated plants.

7. The reported plant prices used for computation of competitive pay price series may not always represent the actual prices paid for milk. A number of reasons account for this type of discrepancy.

- a. Reported pay prices by some plants may be overstated because of butterfat testing and milk weighing errors.
- b. Reported prices may not accurately reflect prices f.o.b. plant because of hauling subsidies. There is no practical way by which hauling subsidies may be included.

- c. Various types of premiums may or may not be included in reported milk prices.
- d. Many dairy plants are organized as cooperatives. This may influence the firms' payment practices since cooperatives may distribute sizeable dividends at the end of the year which, therefore, cannot be included in the price series on a month-by-month basis.

8. The competitive pay price series is more costly to calculate than product formula prices. However, since several series are already computed for uses other than Federal order pricing, costs of computation for Federal order use may not be overly important.

9. Competitive prices are based upon prices reported paid at a sample of plants, and for this reason may be subject to error if the sample is not representative.

10. Because of the need for a price for a given month by the fifth of the following month, prices generally must be based upon estimates for the last half of the month.

11. A pay price which represents the value of milk in a single use can be developed. However, problems may arise in selecting plants which consistently make only the one product (or the two in the case of butter and powder). Also if specialization is sought, diversified plants may not be used. Such diversified plants are becoming increasingly important.

Evaluation

As the preceding discussion indicates, there are good arguments for and against either of the types of formulas used for pricing surplus milk ---product price formulas or competitive pay formulas. However, in recent years there has been a shift in emphasis from the use of product price formulas to competitive pay price formulas in Federal milk orders. Because of the complexity of the issues involving surplus milk pricing, and the fact that there are important advantages and disadvantages for both methods, depending on marketing conditions and circumstances in particular markets, great care should be exercised by the USDA in deciding on the type of surplus milk pricing for any market. The situation in the particular market should determine the type or combination of types of surplus milk pricing formulas. If product price formulas are used, special effort should be made to keep cost allowances and other factors up-to-date.

CHAPTER III

IS MINNESOTA-WISCONSIN PRICE REPRESENTATIVE OF AVERAGE PRICES PAID
BY ALL MANUFACTURING PLANTS IN THE TWO STATES?

Questions have been raised as to whether the Minnesota-Wisconsin price is representative of the average of reported prices paid for manufacturing milk by all plants in the two States. As will be shown later in this report, substantial differences are known to exist in prices reported paid for manufacturing milk by different plants in Minnesota and Wisconsin. These differences are associated with a number of factors including products manufactured, plant efficiency, geographic location, competition for supplies in an area, and other factors.

The sample of plants which is used in determining the Minnesota-Wisconsin price is selected so as to attempt to include a representative group of plants in the two States. If the sample is in fact representative, then the announced Minnesota-Wisconsin price should closely approximate the average of prices reported paid at all plants in the two States. If it is not representative, and is unduly weighted by "high" paying or "low" paying plants, then the Minnesota-Wisconsin price would likely differ significantly from the all plant two-State average.

Another question which exists is whether the procedure for estimating the current month's price (separate and apart from the sample involved) is satisfactory. The main questions here relate to (a) the adequacy of the information obtained from plant managers as to what they intend to pay for milk and (b) the accuracy of other techniques for estimating changes from the previous month.

If the Minnesota-Wisconsin price corresponds closely with more complete information based on reported prices paid at all plants in the two States, it is reasonable to presume that the procedure for estimating the current month's price is satisfactory.

Table III-1 sets forth a comparison of the Minnesota-Wisconsin price and the final average of prices reported paid at all manufacturing plants in the two States. For the 65 month period, August 1961-December 1966, the two prices were the same in 10 months and they differed by only one cent in 29 months.

Between August 1961 and September 1965, the largest difference was three cents and this only occurred during one month. Beginning with October 1965, the differences began to increase and reached a high of seven cents in July 1966. These differences occurred when both butter and cheese prices were relatively volatile and out of normal relationship with each other. However, for the 65 month period the difference between the announced Minnesota-Wisconsin price and the average prices reported paid at all plants handling manufacturing grade milk in the two States was only .9 cents per hundredweight.

This close relationship between the announced Minnesota-Wisconsin price and the average of prices paid at all plants handling manufacturing milk in the two States indicates that over a period of time the Minnesota-Wisconsin series does accurately reflect the average of reported prices for the two States. However, in periods of highly volatile product price changes, and especially when butter and cheese prices get out of normal relationship

with one another, the Minnesota-Wisconsin price has not always accurately reflected the average of reported prices for the two States.

There is the further question of whether the prices finally reported by all plants represent the prices actually paid by the plants. This question will be considered in the next chapter.

Table III-1 - Comparison of Minnesota-Wisconsin Manufacturing Grade Milk Price with Final Two-State Estimated Price, for Milk of 3.5 Percent Butterfat Content, by Months, August 1961-December 1966 1/

Year and Month	Minnesota-Wisconsin series price	Final two-State estimated price	Difference between Final two-State and M-W series
<u>Dollars per hundredweight</u>			
<u>1961</u>			
Aug.	3.27	3.27	0
Sept.	3.29	3.30	+.01
Oct.	3.30	3.31	+.01
Nov.	3.31	3.32	+.01
Dec.	3.31	3.32	+.01
<u>1962</u>			
Jan.	3.30	3.31	+.01
Feb.	3.29	3.28	-.01
Mar.	3.21	3.20	-.01
Apr.	3.05	3.04	-.01
May	3.01	3.02	+.01
June	3.01	3.02	+.01
July	3.03	3.03	0
Aug.	3.04	3.03	-.01
Sept.	3.06	3.05	-.01
Oct.	3.07	3.08	+.01
Nov.	3.10	3.10	0
Dec.	3.11	3.12	+.01
<u>1963</u>			
Jan.	3.10	3.12	+.02
Feb.	3.10	3.12	+.02
Mar.	3.09	3.11	+.02
Apr.	3.08	3.10	+.02
May	3.07	3.10	+.03
June	3.08	3.10	+.02
July	3.09	3.11	+.02
Aug.	3.10	3.12	+.02
Sept.	3.12	3.13	+.01
Oct.	3.15	3.17	+.02
Nov.	3.16	3.18	+.02
Dec.	3.16	3.18	+.02
<u>1964</u>			
Jan.	3.17	3.18	+.01
Feb.	3.16	3.18	+.02
Mar.	3.15	3.14	-.01
Apr.	3.12	3.12	0
May	3.12	3.12	0
June	3.11	3.11	0
July	3.12	3.13	+.01
Aug.	3.15	3.16	+.01
Sept.	3.24	3.24	0
Oct.	3.27	3.29	+.02
Nov.	3.29	3.31	+.02
Dec.	3.29	3.29	0

Continued---

Table III-1 - Comparison of Minnesota-Wisconsin Manufacturing Grade Milk Price with Final Two-State Estimated Price, for Milk of 3.5 Percent Butterfat Content, by Months, August 1961-December 1966 1/ Con.

Year and Month	Minnesota-Wisconsin series price	Final two-State estimated price	Difference between Final two-State and M-W series
<u>Dollars per hundredweight</u>			
<u>1965</u>			
Jan.	3.25	3.24	-.01
Feb.	3.22	3.21	-.01
Mar.	3.22	3.20	-.02
Apr.	3.23	3.21	-.02
May	3.22	3.20	-.02
June	3.20	3.20	0
July	3.21	3.20	-.01
Aug.	3.25	3.26	+.01
Sept.	3.29	3.30	+.01
Oct.	3.34	3.37	+.03
Nov.	3.39	3.44	+.05
Dec.	3.47	3.51	+.04
<u>1966</u>			
Jan.	3.47	3.49	+.02
Feb.	3.58	3.61	+.03
Mar.	3.68	3.69	+.01
Apr.	3.64	3.65	+.01
May	3.65	3.69	+.04
June	3.82	3.82	0
July	4.05	4.12	+.07
Aug.	4.26	4.29	+.03
Sept.	4.34	4.34	0
Oct.	4.26	4.25	-.01
Nov.	4.15	4.16	+.01
Dec.	4.14	4.12	-.02
<u>Simple Average</u>			
65 Months	3.317	3.326	+.009

1/ Prices have been converted from the average butterfat test to 3.5 percent using the butterfat differential specified in Federal orders (Chicago Grade A butter x 0.120).

CHAPTER IV

ANALYSIS OF FACTORS AFFECTING PRICES PAID
FOR MANUFACTURING GRADE MILK

Sample Selection of Plants

Data from a sample of 26 Minnesota and 26 Wisconsin manufacturing milk plants were used in analyzing factors affecting prices paid for manufacturing grade milk.^{1/} These 52 plants are believed to be representative of manufacturing milk plants generally in the two States.^{2/}

The purpose of the analysis was as follows: (1) to ascertain and measure differences that may exist between milk prices actually paid by Minnesota and Wisconsin dairy plants and the milk prices reported as paid by dairy plants, and (2) to determine and evaluate the relationship between various plant factors and prices paid by plants for manufacturing grade milk.

The results provide a basis for appraising the accuracy and reliability of the Minnesota-Wisconsin and other price series, and evaluating factors which affect the level of prices paid at manufacturing plants in Minnesota and Wisconsin.

The sample of dairy plants selected for the study was designed to have three main characteristics: (a) to represent the kinds of manufacturing

^{1/} The data were collected by the Minnesota and Wisconsin Departments of Agriculture and included raw product purchases, product sales, inventories, costs, and financial data on other aspects of the firms' operations.

^{2/} It is not known if any of the 52 plants surveyed are included in the 100 plant sample reporting to the Statistical Reporting Service. In accordance with general policy of SRS, the names of the 100 plant sample have not been disclosed. No effort was made, therefore, to select plants that are part of the SRS sample.

milk plants in the States in about the proportions which they occur, (b) to represent the major types of dairy areas in the States, and (c) to include for each of the areas selected, a cluster of plants which compete with one another for milk supplies, and are, therefore, subject to similar competitive pressures within each area. It was felt this procedure assured a more representative sample than a random sampling technique.

In Minnesota, the plants selected for the sample were taken from that area which has been referred to as the "dairy belt." This is a 30 county area which produced 71 percent of the State's milk in 1964. It extends from southeastern to northwest Minnesota. The "dairy belt" was divided into three regions on the basis of unique characteristics of each area.

(a) Area 1--This is the northwest area of the "dairy belt." It is most distant of the major milk producing regions from markets for either fluid or manufactured dairy products. Ten plants were selected from this area.

(b) Area 2--This is the central area of the "dairy belt." It is located within the fluid milkshed for the Twin City market. As such, pay prices of the manufacturing milk plants may be influenced by the prices paid for milk for fluid use by competing plants. Ten plants were selected from this area.

(c) Area 3--This is the southeast area of the "dairy belt." It is within the corn-soybean area. It is not primarily a supply area for fluid milk although some significant local markets are supplied by it. It is, however, much nearer the large markets for manufactured dairy products than other milk producing areas in Minnesota. Six plants were selected from this area.

Distribution of the Minnesota and Wisconsin plants by type of product manufactured is indicated in tables IV-1 and IV-2. The plants are classified into four groups: butter, butter-powder, cheese, and receiving stations. Some of the plants produced other products, but were classified in their major product classification.

Wisconsin plants selected for the sample were taken from all areas of the State, except the southeastern fluid milk area. Three major areas were designated: (a) South Central Wisconsin, (b) Northeastern Wisconsin, and (c) Northwestern Wisconsin.

It is difficult to categorize dairy operations within each area because of the wide diversification of dairy plant operations throughout Wisconsin. However, in general, South Central Wisconsin is a major area of production of American cheese with considerable quantities of Brick, Italian, and Swiss cheese also made. Northeastern Wisconsin is also a major producing area for American cheese, with considerable quantities of Italian cheese also made. Northwestern Wisconsin is a major production area for butter and nonfat dry milk with some quantities of American cheese manufactured. All areas also have major supplies of Grade A milk.

Table IV-1. Distribution of Minnesota Dairy Plants Receiving Milk from Producers for Manufacturing Use, by Product, 1965

Product	Sample Plants		All Mfg. Plants	
	Number	Percent	Number	Percent
Butter	16	61.5	240	59.0
Butter-powder	7	26.9	57	14.0
Cheese	1	3.9	19	4.7
Receiving Station	2	7.7	91	22.3
Total	26	100.0	407	100.0

Seven Wisconsin plants in the South Central area, eight in the Northeast area, and eleven in the Northwest area were selected for study. The plants were also classified into the same four groups as the Minnesota plants--butter, butter-powder, cheese, and receiving station. (Table IV-2).

The sample represents Minnesota-Wisconsin dairy plants in terms of geographic distribution of plants, various products manufactured, and various competitive situations which may influence milk processing in local areas.

Table IV-2. Distribution of Wisconsin Dairy Plants Receiving Milk from Producers for Manufacturing Use, by Product, 1965

Product	Sample Plants		All Mfg. Plants	
	Number	Percent	Number	Percent
Butter	5	19.2	130	13.1
Butter-powder	3	11.5	66	6.7
Cheese	17	65.4	633	64.0
Receiving Station	<u>1</u>	<u>3.9</u>	<u>160</u>	<u>16.2</u>
Total	26	100.0	989 ^{a/}	100.0

^{a/} Since some plants manufacture more than one product, the total number of Wisconsin plants in a physical sense is less than the total indicated here.

Description of Sample Plants

The sample plants were primarily producers of manufactured dairy products from manufacturing grade whole milk. Fifteen of the Minnesota plants, however, received farm separated cream. This represented 3.5 percent of all butterfat in whole milk and cream purchased by 26 Minnesota sample plants. These purchases of butterfat in cream varied from zero to 18.7 percent of butterfat purchases. No farm separated cream was purchased by the 26 Wisconsin sample plants.

A few of the Minnesota manufacturing plants in the survey sample purchased some Grade A milk. Except for two plants, all this was resold to other plants, or utilized in manufactured dairy products. Two plants processed and distributed some of this as fluid milk products.

However, as is true with respect to the Minnesota-Wisconsin price series, and other competitive pay price series, only manufacturing grade milk prices from these plants were used in the analysis. The prices for Grade A milk diverted to manufacturing uses by the Minnesota plants were not included.

None of the Wisconsin plants in the survey sample distributed fluid products or purchased Grade A milk from farmers.

Total annual milk receipts received by the 52 sample plants varied considerably--from a low of 5.7 million pounds to a high of 190.2 million pounds. The average total milk receipts for all plants was 31.2 million pounds. Receipts from producers averaged 26.7 million pounds annually.

Annual dairy product sales averaged \$1,194,496 for the Minnesota plants and \$1,191,136 for Wisconsin plants. Considerable variation in dairy product sales existed, ranging from \$349,938 to \$4,957,363 for the Minnesota plants, and \$32,870 to \$7,524,734 for the Wisconsin plants.

Some plants also had sources of income other than from the sale of dairy products. For example, cooperative plants - which totaled 45 of the 52 sample plants in the two states combined - received cash refunds from marketing agencies to which they belonged, and from local cooperatives of which they were members. Various sidelines, such as feed, seed, and dairy farm supplies contributed to plant returns. In most Wisconsin sample plants, other sources of income were small relative to income from dairy product

sales. For about one-half of the Minnesota plants, however, other income and particularly patronage refunds from other cooperatives made the difference between a profit and a loss for the year.

Reported Pay Prices for Milk

Average annual prices paid patrons for manufacturing grade milk of 3.5 percent butterfat content by the 52 plants surveyed, in 1965, was \$3.250 per hundredweight (weighted by the volume at individual plants) (Table IV-3). This compares to the average price paid by all plants handling manufacturing grade milk in Minnesota and Wisconsin of \$3.28 for the same year. Thus, from the evidence, the 52 plant sample appears reasonably representative of all manufacturing grade milk plants in the two states, and hence of plants in the Minnesota-Wisconsin series.

Prices in the 52 plants varied from a low of \$3.076, to a high of \$3.438 per hundredweight in 1965. Thus, there was considerable price variation among plants. The average pay price in Minnesota was about five cents per hundredweight less than in Wisconsin.

For purposes of comparison and analysis in the remainder of this section, the 52 plants surveyed in the two States have been grouped according to prices paid patrons for milk of 3.5 percent butterfat. Group 1 is the third of the plants in each State with the highest pay prices, Group 2 is the third of the plants in each State with the medium pay prices, and Group 3 is the third of the plants in each State with the lowest pay prices. Group 1 includes 18 plants, and Groups 2 and 3, 17 plants each.

Table IV-3. Reported Pay Prices for 3.5 Percent Butterfat Milk for 52 Minnesota and Wisconsin Manufacturing Milk Plants, 1965

Plan Plant Grouping	Both States	Annual Average Pay Price <u>a/</u>	
		Minnesota	Wisconsin
		<u>Dollars per hundredweight</u>	
Average price for all 52 plants	3.250	3.223	3.276
Group 1 (One-third of plants with highest pay prices)	3.313	3.291	3.345
Group 2 (One-third of plants with medium pay prices)	3.253	3.208	3.280
Group 3 (One-third of plants with lowest pay prices)	3.166	3.144	3.192

a/ Weighted by volume of milk in individual plants.

Factors Resulting in Understatement or Overstatement of Actual Prices Paid Producers

Three plant factors which are most directly related to the extent to which reported plant prices understate or overstate actual prices paid to producers are: (a) butterfat test error, (b) cash dividends paid at the end of a year or accounting period, in addition to regular prices paid for milk, and (c) plant gain or loss on hauling producer milk from the farm to the plant. The effect of each of these in terms of overstatement or understatement of reported plant prices will be discussed in this section of the report. A later section will quantify the effect of other plant factors which although they do not affect overstatement or understatement of price, do nevertheless affect the price paid by individual plants.

Reported Butterfat Tests

Because butterfat represents such a high proportion of the value of milk, errors in measurement of this component can have a substantial impact on the firms' quoted prices for milk. For example, suppose a plant has milk testing 3.6 percent butterfat, but lists its test as 3.5 percent butterfat, and quotes a price of \$4.00 per hundredweight for milk of that test. With a 7 cent differential for each one-tenth of a percent of butterfat, this plant is actually paying only \$3.93 for 3.5 percent milk rather than the \$4.00 it quoted. It could, therefore, give the appearance of outpaying competing plants with accurate butterfat testing, who were quoting \$3.93 per hundredweight for milk testing 3.5 percent butterfat, when in reality it was paying the same price.

Practices which tend to reduce the reported fat test, such as errors in sampling, weighing and testing and down reading tests to the nearest tenth percent of butterfat could enable a plant to report a higher pay price than it is actually paying.

The purpose of this section is to determine if calculated butterfat tests do differ from reported butterfat tests, and if so, to measure the impact on reported producer pay prices.

The procedure used in the 52 sample plants was to compare reported pounds of butterfat in milk received from farmers and other plants, with pounds of butterfat in products made from the milk. Milk volumes, prices, and reported fat tests were obtained from plant records. Volumes of manufactured products sold by the plants were obtained from sales invoices,

inventory reports and lab reports. Calculated pounds of butterfat in manufactured products were determined on the basis of average product yields. The following were used in calculating pounds of butterfat in manufactured products: (1) fat analyses furnished the plant by the buyer of the product, and (2) theoretical cheese yield formula based on individual plant data with average casein content of milk applied to the formula. This procedure is used in Wisconsin law enforcement to determine gross deviations in the area of Product Accounting. The term "butterfat test error" used throughout this report is the combined errors of milk weights, errors in sampling and testing milk purchased, and all other errors. (See appendix 3 for discussion of procedures used in calculating pounds of butterfat in manufactured products.) The difference between reported fat test and calculated fat test multiplied by the average butterfat differential paid provides an estimate of the effect of the butterfat testing error on prices paid for milk.

Butterfat Test Error

Based on the procedures used in calculating actual butterfat content of milk, 25 of the 26 plants in each State (50 of 52 in the two States), paid for less butterfat than they received from farmers and, therefore, quoted higher prices than actually paid. Paying farmers for a lower butterfat test than the milk contains is referred to as "understatement" of the butterfat test.

The butterfat test error for sample plants resulted in an average understatement of butterfat tests of 1.76 percent in Minnesota, 1.38 percent in Wisconsin and 1.56 percent in the two States combined. (Table IV-4). The

Table IV-4. Butterfat Test Error and Impact on Reported Pay Price for 52 Dairy Plants in Wisconsin and Minnesota

	Understatement of butterfat						Amount by which reported price for milk testing 3.5% butterfat were overstated as a result of understatement of the butterfat test a/		
	Percentage			Volume					
	Minn.	Wis.	Both States	Minn.	Wis.	Both States	Minn.	Wis.	Both States
		Percent			Pounds per cwt.			Cents per cwt.	
Group 1 (High pay)	1.74	1.02	1.42	.062	.037	.051	4.4	3.0	3.9
Group 2 (Middle pay)	1.34	1.46	1.42	.048	.054	.052	3.4	3.8	3.7
Group 3 (Low pay)	2.16	1.66	1.94	.077	.063	.071	5.0	4.8	5.0
Average for all plants	1.76	1.38	1.56	.063	.051	.057	4.4	3.8	4.1

a/ These figures were calculated by multiplying the understating of butterfat in pounds of butterfat per hundred-weight of milk, times the average butterfat differentials paid by plants in each price grouping. (Weighted by the volume of milk in individual plants.) The average butterfat differential was 6.9 cents per point in Minnesota, 7.5 cents per point in Wisconsin and 7.2 cents per point for the two States combined.

understatement of tests amounted to .063 pounds of butterfat per hundred-weight of milk in Minnesota, .051 pounds in Wisconsin, and an average of .057 for the two States combined. 3/ 4/

Low paying plants understated fat purchases to a larger extent than did the higher paying plants--1.94 percent for low paying plants compared to 1.42 percent for the high paying plants, in the two States combined. The same situation existed in the two States separately. Thus high paying plants were not outpaying others because of greater butterfat test error. Instead high paying plants had a lower butterfat error than the low paying plants.

Effect of Butterfat Test Error on Reported Pay Price

Twenty-five of 26 plants in each State overstated pay prices because they understated fat purchases. The average "overstatement" of milk prices was 4.4 cents per hundredweight in Minnesota plants, 3.8 cents per hundredweight in the Wisconsin plants, and an average of 4.1 cents per hundredweight for the 52 Minnesota and Wisconsin plants, combined, (Table IV-4).

Butterfat test error for "high" as well as "low" paying plants appear to have had an impact on reported prices paid farmers for milk by these plants. However, the low paying plants overstated their price more than did the high paying plants--5 cents per hundredweight for low paying plants

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- 3/ The hypothesis that fat gain or loss over all 52 plants differed from zero only because of chance variations, was rejected on the basis of the statistical test, which revealed that understating of tests of the magnitude indicated in this analysis, could have occurred by chance less than one time in a thousand.
- 4/ None of the butter plants exceeded Minnesota's maximum legal overrun allowance of 24%. See Chapter VI for regulations on product accountability in Minnesota and Wisconsin.

compared to 3.9 cents for high paying plants in the two States combined. Thus, upward bias in reported farm milk prices was not due to greater overstatement of price by high paying plants than by low paying plants. Instead the opposite situation prevailed.

The discrepancies between reported butterfat tests and calculated butterfat tests raise questions as to how they arise. One reason is errors in milk testing procedures--either intentional or unintentional. Another is simply "rounding down" of all butterfat tests. Babcock fat tests are legally required to be reported to the nearest tenth of a percent; i.e., milk testing both 3.57 percent and 3.63 percent butterfat is to be reported as 3.6. But if all fractions are read down (i.e. 3.57 percent is read as 3.5 percent) an average understating of about .05 pound of fat per hundred pounds of milk occurs.

Additional reasons for the discrepancies between calculated and reported butterfat tests are:

- (a) Use of composite samples will result in different fat test than if fresh samples are used. Fresh samples test about .02-.04 percent more than composite, and farm milk tests could, therefore, be understated to the extent composite samples are used. All Wisconsin plants used 15 to 16 day composite samples to determine fat purchases.
- (b) The testing procedures and equipment for fat content of butter are subject to considerable error if any laxity in the "official Babcock test" is allowed.

Thus, there are a number of reasons why errors in determining fat content can normally occur, and together they can contribute to an overstatement of farm milk prices.

Dividends

Cooperative dairy plants allocate earnings, if any, in the form of dividends to producer members at the end of each fiscal period. These dividends can be considered as additional payments for milk, over and above the reported price to producers. To the extent dividends are paid, they represent an understatement of the reported price as compared to the actual price.

This section considers the relationship between dividends by cooperatives and producer prices for milk. Total dividends as well as cash dividends were analyzed. Total dividends include stock credits, certificates of equity, or any paper which is allocated to indicate participation in earnings, as well as cash dividends. Dividends were calculated as an average for all plants, although private plants do not pay dividends to producers.

Even though dividends may be interpreted as being an additional payment for milk, they are not included in the reported price series for milk, because there is no practical way they can be included in the current data. For the 52 plants, cash dividends alone represent an increase in returns to producers of 2.1 cents per hundredweight, above payments a plant would report to state and Federal agencies for construction of the Minnesota-Wisconsin manufacturing milk price series. In addition, paper credits-totaled 4.8 cents, some of which will be redeemed in cash at a later

date. If it is accepted that dividends are an additional payment for milk and not a return for ownership, prices plants reported could be understated by at least 2.1 cents per hundredweight. This offsets in part the overstatement in price resulting from understating of butterfat tests discussed earlier.

Classification of dividends by milk pay price groups indicates the lowest pay price group paid the largest cash and total dividends per hundredweight; 3.7 and 9.6 cents, respectively. Dividends of the lowest pay price group were more than one cent per hundredweight above the high price group. (Table IV-5).

Table IV-5. Dividends per Hundredweight of Milk Allocated to Farmers, for 52 Minnesota and Wisconsin Dairy Plants, 1965 ^{a/}

Pay Price Group	Average Cash Dividends	Average Total Dividends ^{b/}
	Dollars per hundredweight	
Group 1 (High pay)	.025	.086
Group 2 (Middle pay)	.007	.038
Group 3 (Low pay)	.037	.096
Average for All Plants	.021	.069

^{a/} This includes both proprietary and cooperative plants. Inclusion of proprietary plants (which do not pay dividends to farmers) reduces the average below those paid by cooperatives alone.

^{b/} Cash plus paper.

Gain or Loss on Hauling Producer Milk

Thirty-three of the 52 Minnesota and Wisconsin sample plants in this study contracted with private truckers to haul producer milk, while 13 owned the trucks and hired the drivers. Six plants had both contract and

and plant operated hauling. A few producers also hauled their own milk. In all cases, hauling charges were deducted from patrons' checks, and plants paid haulers. Producers are subsidized on hauling costs if contract hauling costs are larger than the amounts deducted from producers' checks, or if plant ~~owned~~ trucks operate at a loss. On the other hand, if plants make a profit on hauling, producers receive a lower return than indicated by the reported price.

Hauling profits or losses were calculated for each of the 52 sample plants. Eleven Minnesota and 19 Wisconsin plants had losses on hauling, and 3 Minnesota and 6 Wisconsin plants had profits. The other 13 broke even. Individual plant results ranged from a loss of \$20,577 to a gain of \$17,076 for Minnesota, and a loss of \$66,095 to a gain of \$3,673 for Wisconsin.

The average gain or loss per hundredweight in each pay price group is presented in table IV-6. Reference to this table indicates that sample plants had average hauling losses of 1.4 cents per hundredweight and in effect were, therefore, subsidizing producers by this amount. Thus, actual pay prices for the plants surveyed were 1.4 cents per hundredweight higher than quoted prices, as a result of hauling subsidies. Wisconsin's average "hauling subsidies" were 2.5 cents per hundredweight while Minnesota's were .3 cents per hundredweight.

Hauling gains or losses were classified according to pay price categories in table IV-6. Data in this table indicates that sample plants in the two States combined, with highest pay prices, were making a small profit on hauling, and were, therefore, paying farmers .3 cents per hundredweight lower actual prices than were being quoted. Plants with lower prices had losses on hauling and were, therefore, subsidizing hauling,

and hence were paying an average of 2.3 cents per hundredweight higher actual prices than were being quoted. On the average sample plants subsidized hauling 1.4 cents per hundredweight. Thus, on the average, farmers received an additional 1.4 cents per hundredweight over and above quoted prices, because of hauling subsidies.

Table IV-6. Effect of Gain or Loss from Hauling Producer Milk on Plant Pay Prices for 52 Minnesota and Wisconsin Dairy Plants, 1965 a/

	Both States	Wisconsin	Minnesota
	<u>Dollars per hundredweight</u>		
Group 1 (High pay)	-.003	-.006	0
Group 2 (Middle pay)	+.021	+.034	+.001
Group 3 (Low pay)	+.023	+.042	+.009
Average for All Plants	+.014	+.025	+.003

a/ A profit on hauling would reduce pay prices to producers, while a loss on hauling would represent a hauling subsidy to producers and would, therefore, increase pay prices.

Net Overstatement in Reported Prices for Sample Plants

Plant factors which can bring about differences in reported and actual prices are: (a) butterfat test error, (b) patronage dividends, and (c) hauling subsidies.

Butterfat test error results in an overstatement of quoted prices compared to actual prices. Hauling subsidies and patronage dividends result in an understatement of quoted prices compared to actual prices.

The impact of each of these factors in plants surveyed in Wisconsin and Minnesota is listed in table IV-7. Butterfat test error resulted in an overstatement of 4.1 cents per hundredweight in reported prices. Hauling subsidies resulted in an understatement of 1.4 cents per hundredweight in reported prices, and cash dividends resulted in an understatement of 2.1 cents per hundredweight in reported prices. Thus, the net effect of the factors combined, was an overstatement of .6 cents per hundredweight in reported pay prices.

Table IV-7. Net Effect of Selected Factors on Reported Pay Prices for 52 Minnesota and Wisconsin Dairy Plants, 1965.

Plant Factor	Overstatement or Understatement of Actual Prices as Result of Plant Factor <u>a/</u>
	<u>Cents per hundredweight</u>
Butterfat test error	+4.1
Hauling Subsidy	-1.4
Cash Dividend	-2.1
Net Effect	+ .6

a/ (+) sign indicates overstatement of price; (-) sign indicates understatement of price.

Effect of Plant Operating Factors on Overall Level of Pay Prices

Factors resulting in differences between actual prices and quoted prices, i.e., errors in prices were analyzed in the previous section. In this section, factors affecting the prices paid by individual plants and which account for the variation among plant prices, as contrasted to differences between actual and quoted prices are analyzed. The purpose of

this analyses is to determine whether various plant operating variables and factors affect the level of plant pay prices. To the extent that plant variables do affect a plant's abilities to pay certain prices, and not all plants are subject to or influenced by the same variables, the ability of a plant or plants to meet the price levels in the Minnesota-Wisconsin price series or any other average price would, of course, be affected. On the other hand, if plant variables do not greatly affect plants abilities to pay certain prices, the ability of plants to meet price levels in the Minnesota-Wisconsin series would not be affected. In effect then, this section examines the question as to the ability of individual plants to pay average prices in a price series, when individual plants may be subject to differing operating factors.^{5/}

Percent of Plant Income from Butter, Skim Milk Powder, and American Cheese

The effect of products manufactured on farm milk pay prices, was determined for the 52 sample plants.

Table IV-8 indicates that farm milk pay prices are related to the type of product manufactured. For example, plants with the higher proportions of cheese had the highest pay prices for milk. Conversely, the higher the percentage of butter-powder, the lower the pay price. The lowest pay price group had the highest percentage of butter-powder sales, 79.1 percent, and the lowest percentage of cheese sales, 7.1 percent.

^{5/} A multiple regression was also applied to measure the relationship between the level of pay prices and various plant operating factors. See Appendix 4 for a discussion of these results.

Table IV-8. Percentage of Total Gross Plant Income from Various Dairy Products for 52 Minnesota and Wisconsin Dairy Plants, 1965.

Pay Price Group	Percent of gross income from butter-powder <u>a/</u>	Percent of gross income from American cheese and whey cream	Percent of gross income from other dairy products
Group 1 (High pay)	65.6	27.3	7.1
Group 2 (Middle pay)	48.2	42.2	9.6
Group 3 (Low pay)	79.1	7.1	13.8
Average for All Plants	61.9	28.3	9.8

a/ All receiving stations in the sample shipped their milk to butter-powder plants.

The above results are consistent with pay price series for Minnesota and Wisconsin plants in 1965. Wholesale prices for cheese rose relative to butter and powder. Similarly cheese plant prices during the latter half of the year rose relative to butter-powder prices. It must be emphasized, however, that results for other years might differ from those for 1965. Cheese has not always been the most favorable priced product.

It appears that one of the factors influencing manufacturing milk prices paid farmers by plants is the proportion of gross income derived by plants from specific manufactured products. Therefore, in the short-run, a price series reflecting prices of only one manufactured product will not accurately reflect prices that plants manufacturing various products can profitably pay.

Utilization of Plant Capacity

Fixed costs comprise a large proportion of the processing costs in dairy plants. As a result, unit costs of the dairy plant are highly influenced by the rate at which the capacity of the plant is utilized. Therefore, prices which plants can afford to pay for milk can also be influenced by the proportion of plant capacity utilized.

The proportion of plant capacity utilized was calculated for the 52 sample plants, and related to plant pay prices. (Table IV-9). Estimates of plant capacity were based on a twenty hour day. Although not all plants operate this length of time, nevertheless it is feasible to do so; hence this length of time was selected as a common denominator for all plants. The capacity estimates were calculated from dryer output rates for drying plants, vat capacity for cheese plants, churn capacity for butter plants, and receiving room capacity for receiving stations.

The sample plants had a great deal of excess capacity. Only 23 percent of total plant capacity was used on an average in the 52 plants, with a variation for individual plants from 5 to 92 percent. This low capacity utilization would generally increase unit costs and reduce pay prices. For example, the lower pay group had the lowest percent of capacity utilized--17 percent, compared to an average of 26 percent for the high and middle paying plants.

Table IV-9. Utilization of Plant Capacity by 52 Minnesota and Wisconsin Dairy Plants, 1965

Pay Price Group	Percent which total plant capacity is utilized <u>a/</u>
	<u>Percent</u>
Group 1 (High pay)	24.6
Group 2 (Middle pay)	27.7
Group 3 (Low pay)	17.3
Average for All Plants	23.1

a/ Based on a 20 hour per day operation.

Thus, some relationship appeared to exist between plant pay prices and utilization of plant capacity. To the extent that individual plants have a different proportion of capacity utilized than Minnesota-Wisconsin price series plants as a whole, the individual plant's ability to pay the Minnesota-Wisconsin price will be affected.

Operating Gain or Loss

It is contended by some that plants paying high prices for milk frequently are doing so at the expense of normal profits (also referred to as operating gain or loss for cooperatives). Therefore, other plants will be disadvantaged when they are obligated to pay similar prices (through use of a price series such as the Minnesota-Wisconsin series) in Federal milk orders. Examination of profit-loss data for the 52 Minnesota-Wisconsin plants indicates high paying plants do have lower profits than low paying

plants. (Table IV-10). Specifically, high paying plants had average plant profits of 3.5 cents per hundredweight and total profits (including outside income) of 9.6 cents per hundredweight. These profits were about one cent per hundredweight lower than those of low paying plants.

This analysis of 52 Minnesota-Wisconsin dairy plants indicates that profits for high paying plants are lower than for low paying plants, that profits generally decrease as pay prices increase, and that total profits or losses to milk firms (including outside income or loss) do affect the ability of a plant to pay prices based on the Minnesota-Wisconsin price series.

Table IV-10. Operating Gain or Loss^{*} per Hundredweight of Milk for 52 Minnesota and Wisconsin Dairy Plants, 1965.

	Gain or Loss on Plant Operation	Gain or Loss on Entire Operation Including Outside Income or Loss
	<u>Dollars per hundredweight</u>	
Group 1 (High pay)	.035	.096
Group 2 (Middle pay)	.022	.040
Group 3 (Low pay)	.047	.109
Average for All Plants	.032	.076

Depreciation

The size of the depreciation reserve set aside can also affect a firm's financial stability. A small depreciation reserve could mean that financially

warranted plant improvements would be difficult to finance. This in turn could reduce the plants ultimate profit position and its ability to compete.

Data from the sample plants indicate that higher pay plants have lower relative depreciation reserves than either average or low paying plants. For example, the depreciation set aside for high pay plants was 3.6 cents per hundredweight in 1965, compared to 5.3 cents per hundredweight for low paying firms, and 4.3 cents per hundredweight for all firms. Depreciation set aside as a percent of fixed assets was 5.9 percent for high paying plants, and 6.6 percent for all plants. (Table IV-11). Thus, high paying plants had lower depreciation reserves than lower paying plants.

Table IV-11. Depreciation per Hundredweight, and as a Percent of Fixed Assets, for 52 Minnesota and Wisconsin Dairy Plants, 1965.

Pay Price Group	Depreciation	Depreciation as Percent of fixed assets
	<u>Dol. per cwt.</u>	<u>Percent</u>
Group 1 (High pay)	.036	5.92
Group 2 (Middle pay)	.044	7.59
Group 3 (Low pay)	.053	6.16
Average for All Plants	.043	6.60

On the basis of this data from 52 sample plants in Minnesota and Wisconsin it can be concluded that "higher pay" plants are taking less depreciation than "lower pay" plants. The maintenance of high depreciation reserves could influence a plant's ability to pay the Minnesota-Wisconsin price.

Equity Ratios

If plants pay more than they can afford to, based on their income and costs, financial stability can be impaired.^{6/} Examination of data from the 52 sample plants indicates "High pay" plants generally are less financially stable than "lower pay" plants. For example, the average equity ratio (total equities divided by total assets) was 63.1 for high paying plants, and 75.0 for low paying plants. (Table IV-12). Thus, high paying plants appear to have a weaker financial status than low paying plants.

Table IV-12. Equity Ratios for 52 Minnesota and Wisconsin Dairy Plants.

Pay Price Group	Equity Ratio <u>a/</u>
Group 1 (High pay)	63.1
Group 2 (Middle pay)	60.0
Group 3 (Low pay)	75.0
Average for All Plants	65.4

a/ Total equities divided by total assets.

This close relationship between financial stability and plant pay prices can have implications with respect to a plant's ability to pay the Minnesota-Wisconsin price.

^{6/} The Wisconsin State Department of Agriculture licenses dairy plants on the basis of evidence that they are financially responsible. In order to show sufficient responsibility to assure reasonably prompt payment to producers for milk, plants will need to show at least \$1.10 of current assets for every \$1.00 of current liabilities until January 1, 1970, after which it will be raised to \$1.15 to 1 for a year, and then to \$1.20 to 1. Another test is the owner's equity in the business. The Department requires that dairy plants should have more total assets than total liabilities.

Geographic Location

Geographic location can have an influence on prices received for a commodity, because of transportation cost differences in moving the product from production areas to consuming markets, production cost differences, and differing demands facing the various production areas. This section analyzes whether location of dairy plants within Minnesota and Wisconsin has a significant impact on their pay prices for milk.

In making this analysis, Minnesota and Wisconsin were each subdivided into three subareas. Average prices received by producers in each of the Minnesota and Wisconsin areas are presented in Table IV-13.

In Minnesota, lowest prices were received by producers in the northwest area--the region most distant from the Twin Cities and from major consuming markets in the East. Highest average prices are paid in the central area, surrounding the Twin Cities where manufacturing milk plants are in competition for milk supplies with fluid milk plants. Higher priced fluid milk outlets exert upward pressures on prices paid by manufacturing milk plants in the common supply areas. Average pay prices in the southeastern Minnesota region were lower than in the central region, but higher than prices in the northwest region. The southwest area is close to the consuming markets of the east, however, it is not so strongly influenced by the fluid milk markets as the central region.

In Wisconsin, prices for the northeastern region were highest of the three regions. This area is heavy in cheese production and has stiff competition from fluid milk plants supplying many urban markets. Average

prices in the south-central and northwest Wisconsin regions were lower than in the northeast region. These south-central and northwest regions do not have as much cheese production, nor is the fluid competition as keen as in the northeast region.

Analysis of variance was used to determine whether a significant difference existed between average pay prices by the sample plants for the six areas. The analyses indicates that the differences which existed in average prices between the areas could have occurred by chance less than 1 time in 100 and, therefore, are statistically significant.^{7/}

Table IV-13. Average Producer Pay Prices for 3.5 Percent Manufacturing Grade Milk in Six Regions in Minnesota and Wisconsin, 1965 (52 sample plants)

Regions	Average Price Per Cwt. of 3.5 percent Butterfat
	<u>Dollars per hundredweight</u>
Minnesota	
Central area	3.262
Southeast area	3.235
Northwest area	3.162
Wisconsin	
Northeast area	3.335
Northwest area	3.277
South central area	3.190

^{7/} The calculated F value for variance between areas was 8.93. This is significant at the 1% probability level.

Average pay prices in various areas within the two States, therefore, did differ significantly from one another. A plant's ability to pay a certain price is related to its location which, therefore, affects a plant's ability to pay the Minnesota-Wisconsin price.

Operating Expenses

Plant expenses per hundredweight of milk incurred in manufacturing dairy products are normally inversely related to prices plants can afford to pay producers for milk. In other words, a low cost plant can normally pay a higher price for milk than a high cost plant manufacturing the same product. However, some in the dairy industry contend that high cost plants actually artificially raise their prices as a way of attempting to acquire milk and, thereby, stay in business.

In this study, an analysis was made to determine the extent to which plant costs do affect milk prices to farmers, and hence the level of manufacturing milk prices in Minnesota and Wisconsin. For this phase of the analysis, dairy plants were classified according to three product groups--butter, butter-powder, and cheese, and plants in each product group in turn were divided into "high," "middle," and "low" pay price categories. Table IV-14 lists dairy plant costs by pay price categories for each of the three product groups.

An inverse relationship between pay price and processing costs is indicated for butter and butter-powder plants, but not for cheese plants. High pay butter plants had a 6 cent per hundredweight lower total expense

than low pay butter plants. High pay butter-powder plants had a 19 cent per hundredweight lower expense than low pay butter-powder plants. However, high pay cheese plants had a 7 cent per hundredweight higher cost than low pay cheese plants.

The lack of a normal cost-price relationship in cheese plants may be explained by the diversity in types and styles of cheese, with resulting differences in costs and returns. Within American cheese plants, costs will differ depending on whether barrel cheese or block cheese and whether cheddar or colby cheese is the final product. Thus, high cost cheese plants can be receiving correspondingly higher prices for their cheese, and hence pay "high" prices to farmers for milk. Such diversity in type of operation is not nearly as characteristic within butter or butter-powder plants.

Table IV-14. Costs of Processing for Selected Dairy Products in 52 Minnesota and Wisconsin Dairy Plants, 1965. a/

Pay Price Group	Plant Operating Expense	Administrative Expense	Total Expense
<u>Dollars per hundredweight</u>			
Butter Plants			
Group 1 (High pay)	.193	.003	.226
Group 2 (Middle pay)	.216	.040	.256
Group 3 (Low pay)	.241	.045	.286
Average for All Plants	.218	.040	.258
Butter-Powder Plants			
Group 1 (High pay)	.416	.044	.460
Group 2 (Middle pay)	.530	.060	.590
Group 3 (Low pay)	.587	.061	.648
Average for All Plants	.491	.052	.543
Cheese Plants			
Group 1 (High pay)	.441	.032	.473
Group 2 (Middle pay)	.453	.041	.493
Group 3 (Low pay)	.372	.031	.403
Average for All Plants	.441	.037	.478

a/ Costs were derived from plant records.

Regression analyses was used to measure the relationship between expenses and pay prices. Results are presented in Table IV-15.

Table IV-15. The Effect of Dairy Operating Expenses on Plant Pay Prices for Milk in 52 Minnesota and Wisconsin Dairy Plants, 1965. a/

	Impact of a one cent increase in expenses per hundredweight, on plant pay prices for milk		
	Plant Operating Expenses	Administrative Expense	Total Expense
	<u>Cents per hundredweight</u>		
Butter plants	-.383 <u>b/</u>	-1.521	-.396 <u>b/</u>
Butter-powder plants	-.351 <u>b/</u>	-2.387	-.323 <u>b/</u>
Cheese plants	+.018 <u>c/</u>	- .283	-.035 <u>c/</u>

a/ Slope coefficients were calculated by simple regression analyses.

b/ Significant at the 5 percent probability level, i.e., a figure as large as this could have occurred by chance less than 5 times in 100.

c/ Not significant at the 5 percent probability level, i.e. could have occurred by chance more than 5 times in 100.

Except for plant operating expenses in cheese plants, all increases in expenses are associated with decreases in pay prices. Each one cent increase in total plant expense is associated with about a 1/3-cent decrease in pay prices for both butter and butter-powder plants, and about 1/25-cent decrease in pay prices in cheese plants.

On the basis of data from the 52 sample plants, it cannot be argued that high cost marginal plants are driving up pay prices. Instead, (with the exception of cheese plants making various types of products), high cost plants generally have lower pay prices than do low cost plants.

Volume of Milk Received

On the average, the largest volume plants were in the middle pay group, while the plants with slightly smaller than average milk volume were in the "high pay" group. (Table IV-16.) These findings are somewhat surprising since many economies of scale are known to exist in milk processing, and large plants normally are expected to be able to pay more for milk than smaller plants. However, in actual practice other factors such as type of product, dividend, depreciation, union versus nonunion labor, trucking subsidy policy, and utilization of plant capacity are likely to offset or overshadow the impact of plant size in establishing pay price levels. This is, of course, only with reference to what plants with different volumes pay, and not what they might be able to pay based on their cost structure.

Patron Milk Volume as a Proportion of Total Milk Volume

Patron milk equaled 88 percent of all milk received by the 52 sample plants. Because higher receiving costs are likely to be associated with patron milk than with non-patron milk, an inverse relationship could be expected between pay prices and the proportion of patron milk. In other words, a high percentage of patron milk would be associated with low patron pay prices and vice versa.

Table IV-16. Average Annual Volume of Milk Received by Each of 52 Minnesota and Wisconsin Dairy Plants, 1965.

Pay Price Group	Average volume of manufacturing milk from producers	Average volume all milk received by plants
		<u>Pounds</u>
Group 1 (High pay)	26,444,180	30,032,219
Group 2 (Middle pay)	31,282,503	39,540,808
Group 3 (Low pay)	22,251,733	24,239,605
Average for All 52 Plants	26,655,332	31,247,057

Analysis of data from the 52 sample plants indicates such a relationship does not exist. (Table IV-17). Although the low paying group had the highest percentage of patron milk, nevertheless the high paying group had a higher percentage of patron milk than did the middle paying group. Also, calculation of the coefficient of determination indicates that the coefficient is not significant at the five percent level. Therefore, it may be concluded that little or no relationship exists between the proportion of patron milk and the pay price level.

Table IV-17. Proportion which Patron Milk Deliveries are of Total Milk Receipts for 52 Minnesota and Wisconsin Dairy Plants, 1965.

Plant Group	Patron Milk Deliveries as Percent of Total Milk Receipts
	<u>Percent</u>
Group 1 (High pay)	88.1
Group 2 (Middle pay)	82.5
Group 3 (Low pay)	97.3
Average of all 52 Plants	88.0

Bulk Tank Milk and Bulk Tank Premiums

Premiums for bulk tank milk have been a common practice in milk procurement. These premiums are paid to encourage producers to shift from can to bulk handling of milk, as a way of reducing costs to plants for assembling and receiving milk.

Bulk premiums are included in the prices and values reported for the Minnesota-Wisconsin manufacturing milk price series. A discussion of the effect of bulk milk quantities and premiums on reported pay prices follows:

- (a) Proportion of Bulk Tank Milk: Bulk milk represented 30.1 percent of total manufacturing milk received by the 52 sample plants during 1965. (Table IV-18). No great difference in these proportions existed between Minnesota and Wisconsin plants. Minnesota plants received 30.3 percent, and Wisconsin plants 29.9 percent of their milk as bulk tank milk.

Plants with high pay prices did not necessarily receive a larger proportion of their milk in bulk than plants with lower prices. It is possible that a closer relationship between percent of bulk milk and pay prices existed within product grouping, than for all plants together. Nevertheless, in the aggregate, little relationship existed between proportion of bulk tank milk and level of pay prices.

- (b) Bulk Tank Milk Premiums: The average premium paid on bulk tank milk by Minnesota and Wisconsin sample plants was 13.7 cents per hundredweight (Table IV-18). A negative relationship existed

between the amount of bulk premium paid by plants and their overall pay price level for milk. The low pay price group paid a higher average bulk premium than the high pay price group.

Table IV-18. Percentage Bulk Milk Receipts and Bulk Milk Premiums for 52 Minnesota and Wisconsin Dairy Plants, 1965.

Plant Grouping	Bulk Milk as percent of Total Plant Milk	Bulk Premium Rate	Cents per cwt. Impact of Bulk Premium on Average Price of All Milk
	<u>Percent</u>	<u>Dollars per hundredweight</u>	
Group 1 (High pay)	32.9	12.4	+4.1
Group 2 (Middle Pay)	35.2	14.4	+4.6
Group 3 (Low pay)	20.0	15.1	+2.2
Average for all Plants	30.1	13.7	+3.8

(c) Bulk Tank Premiums Prorated to All Producer Milk: The effect of bulk premiums on reported pay prices of all producer milk is also presented in Table IV-18. This was calculated by computing the total value of bulk premiums for the entire year and dividing this value by the total quantity of patron milk, both can and bulk.

Bulk tank premiums raised the price of all manufacturing grade milk of the 52 plants by 3.8 cents per hundredweight. The increase for Minnesota plants was 3.1 cents per hundredweight, and for Wisconsin 4.5 cents per hundredweight. Again, premiums were not the largest for the high paying plants. "Middle pay" plants had larger premiums than "high pay" plants.

Seasonal Variation

Since a substantial proportion of plant costs are fixed, seasonal variations in milk supplied can affect plant costs. A corollary question is whether seasonal variation in milk supplied also affects plant pay prices to farmers, and hence manufacturing nulls values in Minnesota and Wisconsin and the Minnesota-Wisconsin price series.

Reference to Table IV-19 indicates that "high pay" sample plants had the lowest seasonal variation in milk supplies, and "low pay" plants had the largest seasonal swing. May milk receipts were 55 percent higher than November receipts in high pay plants, and 84 percent higher than November receipts in low pay plants. Thus, on the basis of sample plant data, it could be concluded that seasonal variation in milk receipts at plants, substantially affects plant pay prices.

Table IV-19. Seasonal Variation in Milk Receipts for 52 Minnesota and Wisconsin Dairy Plants, 1965. a/

Pay Price Group	Seasonal Variation
	Percent
Group 1 (High pay)	1.55
Group 2 (Middle pay)	1.63
Group 3 (Low pay)	1.84
Average for all Plants	1.65

a/ May over November milk receipts.

Current Ratios

The current ratio (current assets divided by current liabilities) is a frequently used measure of financial stability of plants. Data from the 52 sample plants indicates that "high" pay plants generally have a lower current ratio than "low" pay plants. For example, the average current ratio was 1.09 for "high" paying plants and 1.42 for "low" paying plants. (Table IV-20).

Table IV-20. Current Ratio for 52 Minnesota and Wisconsin Dairy Plants.

Pay Price Group	Current Ratio <u>a/</u>
	Percent
Group 1 (High pay)	1.09
Group 2 (Middle pay)	1.05
Group 3 (Low pay)	1.42
Average for all Plants	1.15

a/ Current assets divided by current liabilities.

OTHER CONSIDERATIONS IN PRICING MILK FOR MANUFACTURING USE

Use of a Single Surplus Class Price

Use of a single price factor (or a method of establishing a single price), requires selecting one which is most representative of the value of milk for manufacturing use. Herein lies one of the basic problems associated with surplus pricing, and the source of much current controversy. In effect, the agency establishing a surplus price must, on the basis of evidence at a hearing, select a single price which is representative of some average value of milk for manufacture. This must be done even though it is known that such a price will be higher than some plants pay for milk for manufacturing, and lower than others are paying.

To gain insight into the nature of the problem of attempting to arrive at a single measure of manufacturing milk values, it is helpful to observe the differences which exist in prices paid for milk for manufacturing. Table V-1 shows a frequency distribution of prices reported paid for manufacturing grade milk at over 1,000 unregulated manufacturing plants in the States of Minnesota and Wisconsin. This table includes data for all plants handling manufacturing milk in the two States.

Prices on a 3.5 percent butterfat basis paid by 78 percent of the Minnesota and Wisconsin manufacturing plants had a range of 20 cents per hundredweight in June, and 34 cents in November. These differences are associated with factors such as plant efficiency, transportation costs, types of products manufactured, and the local competitive situation for milk supplies and other factors, as discussed in the previous chapter.

Table V-1. Range in Prices Paid by Manufacturing Grade Milk Plants in Minnesota and Wisconsin, June and November 1965. 1/

Prices paid per cwt.	June	November
<u>Dollars</u>	<u>Percent of Plants</u>	
under - 2.94	2.3	0
2.95 - 3.01	2.3	.1
3.02 - 3.08	8.0	1.1
3.09 - 3.15	30.3	3.5
3.16 - 3.22	33.0	2.7
3.23 - 3.29	15.0	8.5
3.30 - 3.36	6.0	14.5
3.37 - 3.43	2.0	20.4
3.44 - 3.50	1.0	21.8
3.51 - 3.57	.1	13.0
3.58 - 3.64	<u>2/</u> 0	5.7
3.65 - over	<u>2/</u> 0	8.7
TOTAL	100.0	100.0

1/ Based on data obtained from the Statistical Reporting Service representing all plants in both States as reported under State laws of the respective States at year-end. All prices adjusted to 3.5 percent butterfat by applying the same butterfat differential used to adjust the Minnesota-Wisconsin price.

2/ Less than one-tenth of one percent.

Price Differences Associated with Location

The prices paid in Crop Reporting Districts in Minnesota and Wisconsin appear in Table V-2.

Table V-2. Average prices paid to producers for milk delivered to Minnesota and Wisconsin dairy plants, per hundredweight of milk converted to 3.5 percent, by Crop Reporting Districts, 1965, June and November 1965 ^{1/}

Crop Reporting Districts	N. West	N. Cen.	N. East	W. Cen.	Cen.	E. Cen.	S. West	S. Cen.	S. East	State
<u>Dollars per hundredweight</u>										
<u>Minnesota</u>										
Mfg. grade milk 1965	3.01	3.10	3.12	3.21	3.27	3.18	3.26	3.29	3.27	3.25
June 1965	2.99	3.08	3.07	3.18	3.24	3.13	3.23	3.25	3.22	3.22
November 1965	3.12	3.19	3.13	3.39	3.38	3.30	3.35	3.39	3.41	3.37
<u>Wisconsin</u>										
Mfg. grade milk 1965	3.20	3.30	3.28	3.23	3.27	3.32	3.29	3.33	3.32	3.28
June 1965	3.15	3.19	3.18	3.17	3.17	3.20	3.20	3.27	3.22	3.19
November 1965	3.35	3.53	3.49	3.38	3.47	3.56	3.51	3.56	3.49	3.49

^{1/} Converted by butterfat differentials specified in Federal orders for adjusting Minnesota-Wisconsin price to 3.5 percent.

In 1965, Minnesota manufacturing grade milk prices in Crop Reporting Districts varied from \$3.01 to \$3.29 per hundredweight--a range of 28 cents. In June, the range was 26 cents and in November it was 29 cents. In Wisconsin, the annual average price for manufacturing grade milk varied from \$3.20 to \$3.33 a range of 13 cents. In June, the range was 12 cents, and in November it was 21 cents.

The price for manufacturing grade milk in Wisconsin has tended to be higher than Minnesota pay prices when milk supplies are short and the demand for cheese is strong, and the Minnesota pay price has generally been higher when milk supplies are heavy, particularly during the flush months. However, average pay prices for the two States are in close alignment. For the

seven-year period 1961-1967, prices paid for manufacturing grade milk in Wisconsin averaged \$3.42 per hundredweight and \$3.40 in Minnesota (Table V-3).

Table V-3. Manufacturing Grade Milk Prices.

Year	Minnesota	Wisconsin
	Dollars per cwt. of 3.5% milk ^{1/}	
1961	3.28	3.25
1962	3.14	3.09
1963	3.11	3.12
1964	3.18	3.19
1965	3.26	3.29
1966	3.85	4.00
1967	4.01	3.98
Seven year avg.	3.40	3.42

^{1/} Converted to 3.5 percent by using differential specified in Federal orders for adjusting Minnesota-Wisconsin price.

Differences Associated with Products Manufactured

Over a period of time there is little difference in the average of prices paid for milk used in the major manufacturing milk products, i.e., butter-powder, Cheddar cheese, and evaporated milk. Plants making these products compete with each other for milk supplies, and generally must return about the same amount to producers over a period of time in order to get producers to continue to supply them with milk. This is particularly true in States such as Minnesota and Wisconsin where the number of dairy plants is large and competition for milk supplies is keen. Also, the existence of

a number of large diversified plants making several products allows plants to shift milk readily to the most profitable use at any particular time.

Table V-4 shows the seven-year average of prices paid for milk used in butter-powder and American cheese. For this seven-year period, there was only slight difference in average prices paid. The two-State weighted average of prices paid by cheese plants in Minnesota and Wisconsin, exceeded the two-State creamery pay price by one cent per hundredweight.

Table V-4. Minnesota-Wisconsin Creamery and Cheese Plant Pay Prices for Manufacturing Grade Milk.

Year	Minnesota-Wisconsin creamery pay price <u>1/</u>	Minnesota-Wisconsin cheese plant pay price <u>2/</u>
	<u>Dollars per cwt. of 3.5 percent milk <u>3/</u></u>	
1961	3.28	3.23
1962	3.13	3.08
1963	3.12	3.15
1964	3.18	3.21
1965	3.26	3.30
1966	3.86	4.01
1967	4.00	3.96
Seven-year avg.	3.41	3.42

1/ State prices weighted by proportion of total volume of butter produced in the two States during preceding year.

2/ State prices weighted by proportion of total volume of cheese produced in the two States during preceding year.

3/ Converted to 3.5 percent by using differential specified in Federal orders for adjusting Minnesota-Wisconsin price.

In the short-run, however, marked differences exist at times between the average of prices paid for milk for butter-powder and the average of prices paid for milk for American cheese.

For example, in 1966, the two-State weighted average of prices paid by cheese plants in Minnesota and Wisconsin exceeded the two-State creamery pay price by 16 cents per hundredweight. Table V-4 shows that cheese plants have outpaid creameries, on an annual basis, during the past four years, 1963-1966. In 1961 and 1962, creamery pay prices were higher. Monthly variations in creamery pay prices and cheese pay prices from the Minnesota-Wisconsin price appear in figure V-1.

Table V-5 shows the amount by which Minnesota-Wisconsin cheese plant pay prices were above or below creamery pay prices, by months, during 1961-62 and 1965-66. In January 1961, the cheese pay price exceeded the creamery pay price by 18 cents. However, by May of that year the creamery pay price was 10 cents over the cheese pay price, and by March of 1962 it exceeded the cheese pay price by 16 cents.

In August 1965, the creamery pay price was 4 cents higher than the cheese pay price, but by December the cheese pay price was 21 cents higher. The spread increased to a peak of 34 cents in March 1966, and then dropped sharply to only a 9 cent spread in December 1966.

Table V-5. Amount by which Minnesota-Wisconsin cheese plant pay prices were above or below Minnesota-Wisconsin creamery pay prices by months for 1961, 1962, 1965, and 1966.

Month	1961	1962	1965	1966
<u>Dollars per hundredweight of 3.5 percent milk</u>				
January	+.18	-.08	+.07	+.29
February	-.03	-.10	+.03	+.29
March	-.04	-.16	+.03	+.34
April	-.08	-.07	+.01	+.14
May	-.10	-.08	-.02	+.10
June	-.10	-.07	-.04	+.15
July	-.11	-.07	-.04	+.02
August	-.08	-.06	-.04	+.09
September	-.07	-.04	-.01	+.05
October	-.04	+.03	+.05	+.19
November	-.06	+.03	+.13	+.11
December	-.08	+.05	+.21	+.09
Average	-.05	-.06	+.03	+.16

The relative level of prices paid for milk in the two States is partially explained by the relative importance of butter and powder to cheese in the manufacturing dairy industries in each State. Minnesota's industry is largely a butter-powder industry. Wisconsin has a very large cheese industry. As a result, when cheese prices are high relative to butter-powder the all manufacturing price for Wisconsin is high relative to Minnesota. This situation occurred during 1961-62 and 1965-66 (figure V-2). When prices for butter and powder are high relative to cheese then the Minnesota all manufacturing milk price tends to be higher than the Wisconsin price.

In Minnesota and Wisconsin, competitive prices for milk for a particular product are influenced by prices paid at plants making other

Figure V-1. Deviation from Minnesota-Wisconsin Manufacturing Grade Milk Price In Cents Per Hundredweight

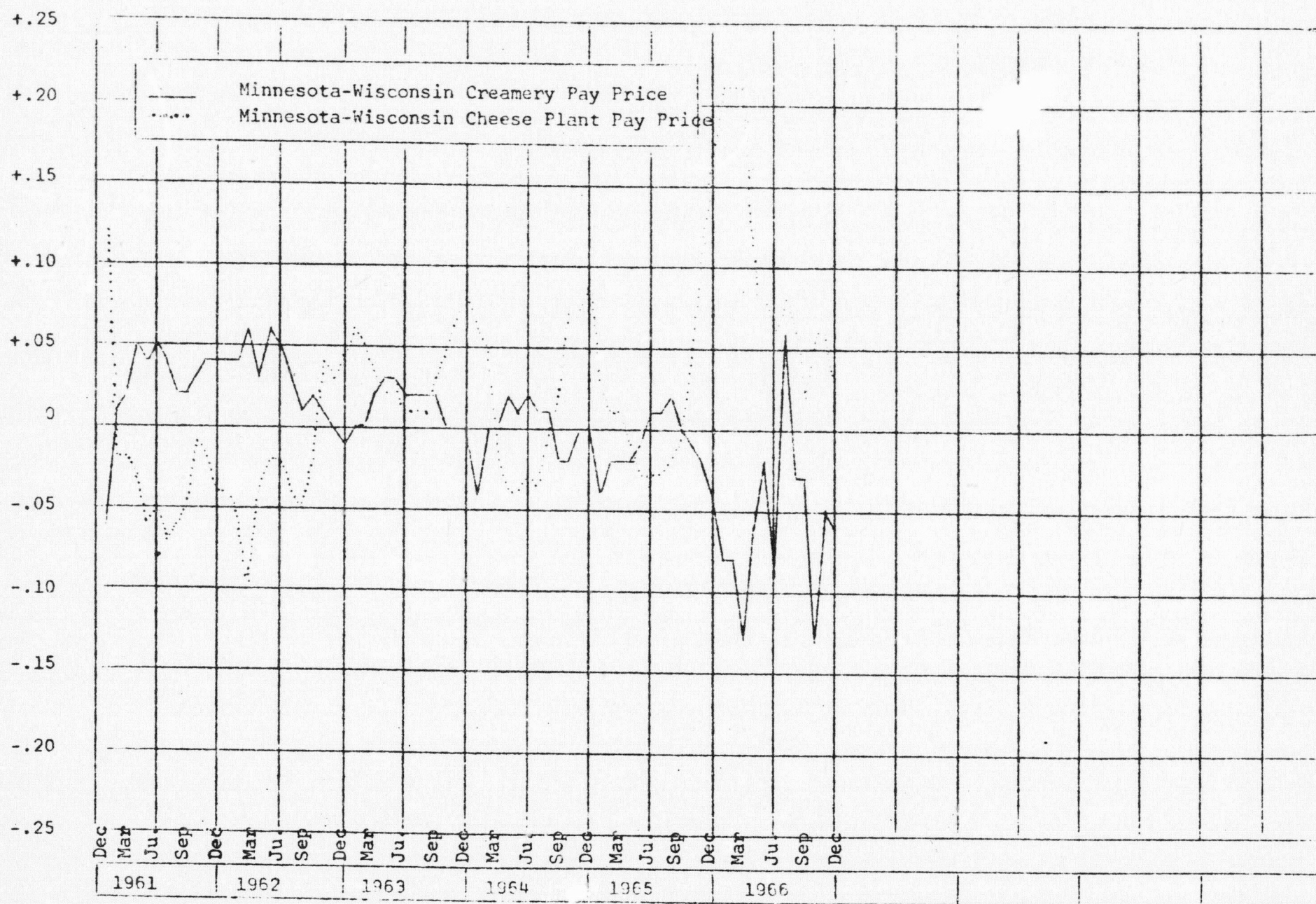
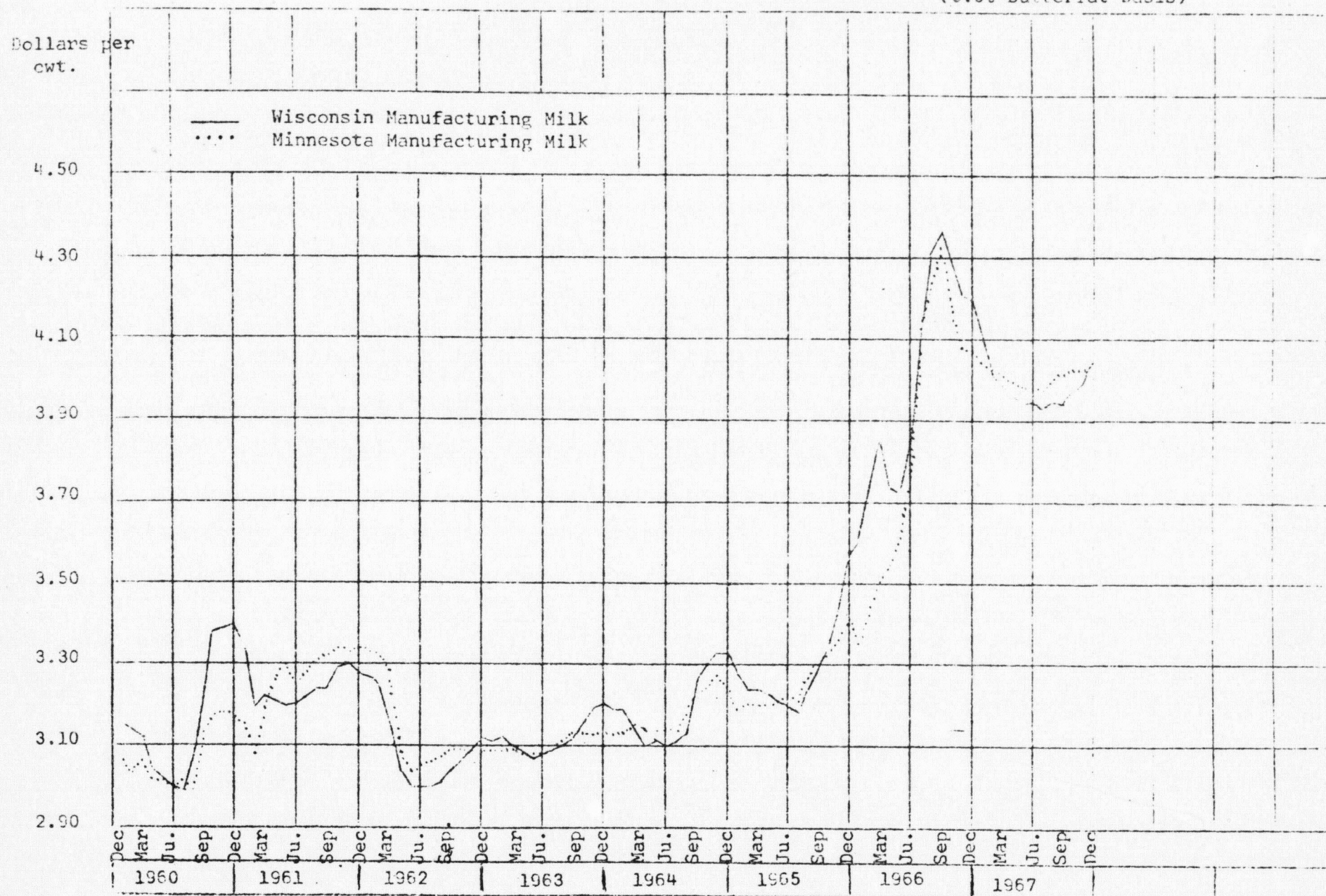


Figure V-2. Prices Paid for Manufacturing Milk, Minnesota and Wisconsin

(3.5% butterfat basis)



Source: Wisconsin Dairying, Agri

manufactured products. This makes for a situation where competitive prices for milk for one manufactured product reflect to a considerable extent the general going value of milk rather than a particular use value. For example, in those months of 1965 and 1966, when supplies of manufacturing grade milk were tight and cheese prices were high relative to butter-powder prices, creameries in Wisconsin had to pay substantially higher prices than creameries in Minnesota, to compete for supplies with cheese plants which predominate in Wisconsin and are relatively few in number in Minnesota. In 1962-64, when supplies were more abundant and product prices in closer relationship, cheese plants in Wisconsin did not have to pay as high prices as cheese plants in Minnesota to compete for supplies. However, over time, prices are in close relationship as indicated by the seven-year annual average prices paid by creameries and cheese plants in the two States. (See table V-6).

Table V-6. Manufacturing grade milk prices.

Year	Wisconsin		Minnesota	
	Cheese plants	Creameries	Cheese plants	Creameries
Dollars per cwt. of 3.5 percent milk a/				
1961	3.23	3.29	3.20	3.28
1962	3.08	3.13	3.10	3.13
1963	3.14	3.14	3.19	3.11
1964	3.20	3.19	3.26	3.18
1965	3.29	3.28	3.34	3.25
1966	4.02	3.90	3.96	3.83
1967	3.94	3.99	4.05	4.00
Seven-year avg.	3.41	3.42	3.44	3.40

a/ Converted to 3.5 percent by using differential specified in Federal orders for adjusting Minnesota-Wisconsin price.

There is some indication that plants making certain foreign type cheese and also those making ice cream and cottage cheese and other specialty dairy products return somewhat more to producers. A study of the relative profitability of manufacturing alternative types of dairy products in the New York milkshed showed that the combination of ice cream mix and creamed cottage cheese offered manufacturers of dairy products the widest margins.^{1/} Calculated margins for ice cream mix combinations averaged about 60 cents per hundred pounds of milk higher than margins involving either butter or manufacturing cream. A difference in the level of margins from the manufacture of alternative dairy products has generally been recognized by the industry and has been demonstrated by similar studies made in other parts of the country.^{2/} The following table shows U. S. average prices paid by plants for manufacturing grade milk used in making American cheese and specialty cheese products.

^{1/} "Class III Milk in the New York Milkshed: IV Processing Margins for Manufactured Dairy Products," C. E. McAllister and D. A. Clarke, Marketing Research Report No. 419, USDA, 1960.

^{2/} "Pricing Milk for Manufacturing Purposes in California," D. A. Clarke, O. D. Forker, and A. C. Johnson, Bulletin 801, University of California, 1964.

Table V-7. U. S. Average prices paid by plants for manufacturing grade milk used in various types of cheese, average 1966.

Products	Price at 3.5% <u>a/</u>
	<u>Dollars</u>
American cheese	3.84
Misc. cheese:	
Swiss	3.93
Brick and Munster	3.99
Italian	3.91
All other	3.74
Total (misc.)	3.89
Total cheese	3.86

a/ Converted to 3.5 percent by using differential specified in Federal orders for adjusting Minnesota-Wisconsin price.

With the short-run differences which exist at times in prices paid for milk for different manufacturing uses, it is easy to see why there is so much controversy as to the appropriate level of a single price for manufacturing milk. This is true particularly at times when market prices of cheese are out of normal relationship with market prices for butter and powder.

One approach to this problem is to establish more than one surplus price, or to use an alternative price if the single price exceeds the butter-powder formula price values by more than a specified amount. There are a number of considerations involved in this issue whether to establish single or multiple surplus class prices.

Proposals have been made to establish one surplus class price for butter-powder and cheese, and another higher surplus class price for milk used in "soft products." Some industry representatives have proposed that

separate cheese and butter-powder class prices be based upon cheese and butter-powder formulas respectively. Others have suggested that a Minnesota-Wisconsin butter-powder pay price series be developed and that a Minnesota-Wisconsin cheese plant pay price series be developed. Special "soft products," class prices in some markets provide a stated premium of 15 to 25 cents over the Minnesota-Wisconsin price.

Also in a number of Federal orders proposals have been made and adopted which provide for the use of a butter-powder "snubber" to the Minnesota-Wisconsin price. The "snubber" price, a butter-powder formula, is the effective price whenever it is lower than the Minnesota-Wisconsin price.

Considerations Involved in the Use of a Single Surplus Class Price vs. Multiple Surplus Class Prices

Single Surplus Class Price

The use of a single surplus class price is justified by proponents of this approach on the basis of one or more of the following considerations:

A. It is difficult over time to develop evidence which indicates milk for different uses has substantially different values--or to quantify these differences in value. Often price differences among plants making the same product can be shown to be as great or greater than price differences associated with different products.

B. Even when (or if) differences between various uses exist, it is desirable to establish surplus prices which will encourage

utilization in higher-valued products, rather than to provide means by which milk can be utilized in lower use value products and thereby reduce blend prices to producers.

C. In the case of soft products, efforts under the Federal milk order program to establish substantially higher prices for milk for cottage cheese and specialty cheese and ice cream have been generally unsuccessful because of availability of manufacturing milk supplies at close to the Minnesota-Wisconsin price.

D. Unregulated manufacturing plants must compete for supplies in the general market for manufacturing milk. Therefore, when butter-powder or cheese prices are out of line, plants making only one product, as a matter of course, have to pay more or less than they can afford to pay in order to compete for supplies of milk. Over time price disparities for various products either balance out due to interaction of supplies and demand or plants shift to alternative higher priced products. Thus it is argued that it is also reasonable to have only one order price for surplus milk.

Multiple Surplus Class Price

Proponents of more than one surplus class price justify this approach on the basis of one or more of the following considerations:

A. Differences do clearly exist in the short-run in the value of milk for various uses. In the interest of orderly handling of the surplus it is desirable to provide separate class prices reflective of

the value of milk at any particular time in its major manufacturing uses. This is particularly true, it is argued, in the cases of markets where the facilities for manufacturing milk into some products-- particularly cheese do not exist. In such circumstances, it is contended, milk cannot always be shifted into higher-valued uses but must be manufactured into products for which facilities exist.

B. If a single class price is used it must be low enough to assure handling of all surplus in a market. With multiple surplus class prices, it is possible to achieve a higher overall return for surplus milk. This is accomplished by establishing prices for various uses based on their market values, rather than having abnormally low prices, because one use has depressed market prices.

C. Since the value of milk for soft products is not related to a national market, the opportunity exists for establishing somewhat higher prices for milk utilized in "soft products." It also may be justified by the higher costs of transportation associated with milk used in such products.

The Minnesota-Wisconsin Price Limited by a Butter-Powder
"Snubber" Formula in Surplus Pricing

In order markets where there are facilities for making both butter-powder and cheese, the use of a broad competitive pay price, such as the Minnesota-Wisconsin price, provides the incentive for shifts in the utilization of milk when finished product prices are out of normal relationship. The shift in utilization from butter to cheese in the Chicago market during

1965 and 1966 when cheese prices were high relative to butter prices was noted in an earlier section. However, in some markets facilities for making cheese may not be available. In such situations the surplus may be used to make ice cream and cottage cheese, but substantial quantities may also need to be used in butter and powder. Plants handling the market surplus and putting it into butter and powder could experience a financial strain if they paid the Minnesota-Wisconsin price during periods when such price significantly exceeded butter-powder product values.

To provide relief when this type of situation exists, 15 orders using the Minnesota-Wisconsin price for surplus pricing contain a proviso that such price cannot be more than a butter-powder snubber formula value.^{3/}

^{3/} The Federal order markets using the Minnesota-Wisconsin price series limited by a butter-powder "snubber" formula in pricing milk in the lowest use class, the date the pricing formula became effective, and the butter-powder formula used is as follows:

<u>Order</u>	<u>Effective Date of Pricing Formula</u>
1. Cincinnati <u>a/</u>	3/ 1/66
2. Clarksburgh <u>a/</u>	2/ 1/66
3. Columbus <u>a/</u>	5/ 1/64
4. Fort Wayne <u>b/</u>	8/ 1/62
5. Indianapolis <u>b/</u>	5/18/62
6. Kansas City <u>c/</u>	4/16/66
7. Miami Valley <u>b/</u>	9/ 1/67
8. Northeastern Ohio <u>a/</u>	4/ 1/65
9. Northern Louisiana <u>c/</u>	5/ 1/67
10. Northwestern Ohio <u>a/</u>	1/ 1/65
11. Puget Sound <u>c/</u>	7/ 1/66
12. Southern Michigan <u>b/</u>	1/ 1/63
13. Wheeling <u>a/</u>	9/ 1/66
14. Wichita <u>c/</u>	9/ 1/66
15. Youngstown-Warren <u>a/</u>	2/ 1/66
<u>a/</u> (Chicago 92-score butter price - 3 cents x 4.2) + (Chicago area spray powder price - 5.5 cents x 8.2025) + 10 cents	
<u>b/</u> (Chicago 92-score butter price - 3 cents x 4.2) + (Chicago area spray powder price - 5.5 cents x 8.2) + 10 cents	
<u>c/</u> (Chicago 93-score butter price x 4.2) + (Chicago area spray powder price x 8.2) - 48 cents	

In effect the butter-powder "snubber" means that a plant's order obligation for Class II surplus milk cannot be more than the butter-powder snubber formula price. Where the Minnesota-Wisconsin price is lower than the butter-powder "snubber" price, the plant's order obligation would be at the Minnesota-Wisconsin price level. If the formula "snubber" is lower then it is the surplus price. The use of these so-called "snubbers" provides relief under certain circumstances and thus accommodates one objective of surplus pricing--to assure that the price for surplus milk is at levels at which handlers will be willing to accept it.

However, an equally important objective in surplus pricing is to provide the highest possible returns to all producers, and not to provide unreasonable profits on the handling of surplus milk.

In an order market using the Minnesota-Wisconsin price for pricing surplus milk, a regulated plant making cheese does not pay the full competitive value for milk when cheese prices are high relative to butter-powder prices. The use of a butter-powder snubber, however, widens the disparity between the value of milk for cheese and the order price for milk used to make cheese, when cheese prices are high relative to butter-powder prices. In 1966, the average price paid by Wisconsin cheese plants for manufacturing grade milk was \$4.02. The annual average surplus price in the order markets using the butter-powder snubber was \$3.76. Any plants under these orders making cheese thus had a 26 cent competitive price advantage over prices paid by unregulated cheese factories in Wisconsin. This is a problem when the butter-powder snubber is used.

The Minnesota-Wisconsin price has ceased functioning in those markets which have the snubber in their surplus pricing formula. The Indianapolis order was the first market to use the Minnesota-Wisconsin price limited by a butter-powder snubber formula in pricing surplus milk. During the first 31 months that this formula was used, June 1962-December 1964, the butter-powder formula in the order exceeded the Minnesota-Wisconsin price in 18 months, and in those months, the Minnesota-Wisconsin price was the Class II price. However, during the next 36 months, January 1965-December 1967, the Minnesota-Wisconsin price was the surplus price in only three months. Two of these months were in 1965. The last time the butter-powder snubber value exceeded the Minnesota-Wisconsin price was in July 1966.

In 1963, the annual average of creamery pay prices in Minnesota and Wisconsin was one cent below the butter-powder snubber value. In 1964, the creamery pay price was one cent above the snubber value, in 1965 it averaged four cents higher and in 1966 and 1967, the differences were 10 and 8 cents, respectively.

In summary, there is some question as to whether the use of a snubber to the Minnesota-Wisconsin price carries out the surplus pricing objective of providing the highest possible returns to producers. It does, of course, provide relief for butter-powder plants during the periods when significant differences between the Minnesota-Wisconsin prices and butter-powder product values prevail. Care should be taken, however, to see that the butter-powder snubber formula is realistic and up-to-date in terms of processing cost allowances.

Table V-8. Indianapolis Class II Price, Minnesota-Wisconsin Manufacturing Grade Price, Butter-Powder Snubber Formula Price, and Average Prices Reported Paid Farmers for Milk Used in Making Butter and Creamery By-Products in Minnesota and Wisconsin, January 1963 - December 1967

Year and Month	Ind. Class II price	Minn.-Wis. mfg. grade price	Butter-powder formula	Minn.-Wis. exceeds BP snubber pr.	Minn.-Wis. cream. a/ pay price
<u>1963</u>					
Jan.	3.10	3.10	3.12	-.02	3.10
Feb.	3.10	3.10	3.12	-.02	3.10
Mar.	3.09	3.09	3.12	-.03	3.11
Apr.	3.08	3.08	3.12	-.04	3.11
May	3.07	3.07	3.12	-.05	3.10
June	3.08	3.08	3.12	-.04	3.10
July	3.09	3.09	3.12	-.03	3.11
Aug.	3.10	3.10	3.12	-.02	3.12
Sept.	3.12	3.12	3.20	-.08	3.14
Oct.	3.14	3.15	3.14	+.01	3.15
Nov.	3.13	3.16	3.13	+.03	3.16
Dec.	3.13	3.16	3.13	+.03	3.16
Average	3.10	3.11	3.13	-.02	3.12
<u>1964</u>					
Jan.	3.13	3.17	3.13	+.04	3.13
Feb.	3.13	3.16	3.13	+.03	3.16
Mar.	3.13	3.15	3.13	+.02	3.15
Apr.	3.12	3.12	3.12	0	3.14
May	3.12	3.12	3.12	0	3.13
June	3.11	3.11	3.13	-.02	3.13
July	3.12	3.12	3.13	-.01	3.13
Aug.	3.15	3.15	3.20	-.05	3.16
Sept.	3.24	3.24	3.27	-.03	3.22
Oct.	3.23	3.27	3.23	+.04	3.25
Nov.	3.29	3.29	3.30	-.01	3.29
Dec.	3.18	3.29	3.18	+.11	3.29
Average	3.16	3.18	3.17	+.01	3.18
<u>1965</u>					
Jan.	3.13	3.25	3.13	+.12	3.21
Feb.	3.13	3.22	3.13	+.09	3.20
Mar.	3.13	3.22	3.13	+.09	3.20
Apr.	3.17	3.23	3.17	+.06	3.21
May	3.17	3.22	3.17	+.05	3.21
June	3.16	3.20	3.16	+.04	3.21
July	3.17	3.21	3.17	+.04	3.22
Aug.	3.25	3.25	3.26	-.01	3.27
Sept.	3.29	3.29	3.30	-.01	3.29
Oct.	3.34	3.34	3.34	0	3.33
Nov.	3.36	3.39	3.36	+.03	3.37
Dec.	3.36	3.47	3.36	+.11	3.43
Average	3.32	3.27	3.22	+.05	3.26

a/ Pay prices for the individual States weighted by the two-state production for the previous year.

cont.

Table V-8. Indianapolis Class II Price, Minnesota-Wisconsin Manufacturing Grade Price, Butter-Powder Snubber Formula Price, and Average Prices Reported Paid Farmers for Milk Used in Making Butter and Creamery By-Products in Minnesota and Wisconsin, January 1963 - December 1967

Year and Month	Ind. Class II price	Minn.-Wis. fg. grade price	Butter-powder formula	Minn.-Wis. exceeds BP snubber pr.	Minn.-Wis. cream. <u>a/</u> pay price
<u>1966</u>					
Jan.	3.21	3.47	3.21	+.26	3.38
Feb.	3.31	3.58	3.31	+.27	3.50
Mar.	3.40	3.68	3.40	+.28	3.56
Apr.	3.47	3.64	3.47	+.17	3.58
May	3.56	3.65	3.56	+.09	3.63
June	3.67	3.82	3.67	+.15	3.74
July	4.05	4.05	4.06	+.01	4.10
Aug.	4.20	4.26	4.20	+.06	4.23
Sept.	4.29	4.34	4.29	+.05	4.31
Oct.	4.02	4.26	4.02	+.24	4.13
Nov.	3.99	4.15	3.99	+.16	4.11
Dec.	3.92	4.14	3.92	+.22	4.07
Average	3.76	3.92	3.76	+.16	3.86
<u>1967</u>					
Jan.	3.92	4.08	3.92	+.16	4.04
Feb.	3.91	4.02	3.91	+.11	4.01
Mar.	3.91	4.01	3.91	+.10	4.00
Apr.	3.91	3.98	3.91	+.07	3.99
May	3.91	3.96	3.91	+.05	3.97
June	3.91	3.96	3.91	+.05	3.97
July	3.91	3.95	3.91	+.04	3.96
Aug.	3.94	3.97	3.94	+.03	3.98
Sept.	3.97	3.97	3.93	+.04	3.99
Oct.	3.91	3.98	3.91	+.07	4.00
Nov.	3.91	4.00	3.91	+.09	4.01
Dec.	3.96	4.04	3.96	+.08	4.03
Average	3.92	3.99	3.92	+.07	4.00

a/ Pay prices for the individual States weighted by the two-state production for the previous year.

CHAPTER VI

STATE PROGRAMS TO ASSURE ACCURATE PAYMENT FOR MILK

Wisconsin had 792 dairy plants buying milk from approximately 69,900 dairy farmers in late 1967. Minnesota had 501 dairy plants buying milk and cream from about 59,000 milk producers. The accuracy of milk weights and butterfat tests is of vital importance to both producers and to dairy plants. Each farmer desires and should receive accurate weights and tests on the milk he sells. Accuracy is also necessary to assure that milk price series used in other government programs is based on correct data. Accuracy of weights and test is also necessary for equitable competitive relations among dairy plants.

Both Minnesota and Wisconsin have statutes, administrative codes and agencies for regulating the equipment and procedures for weighing and testing of milk and cream.^{1/} The statutes also authorize the State Departments of Agriculture to check plant records and to require plant operating records.^{2/}

The agencies charged with the administration of these statutes and codes in Wisconsin is the Economic Practices Division, the Food Division, and the Trade Regulations Division of the Wisconsin State Department of Agriculture. In Minnesota, butterfat testing and reporting are regulated by the Food Inspection Division of the Minnesota Department of Agriculture, and equipment used for weighing and measuring is regulated by the Weights

^{1/} Weighing of milk: Wisconsin Statutes, Chapter 98
Minnesota Statutes, Chapter 239.23
Testing for butterfat: Wisconsin Administrative Code 107
Minnesota Statutes, Chapter 32

^{2/} Wisconsin Statutes, Chapter 93
Minnesota Statutes, Chapter 32, Section 18 and 19.

and Measures Division of the Railroad and Warehouse Commission. Considerable similarity in the control programs exists in the two States.

Routine Control of Product Accountability

(A) Wisconsin: A complete audit of plant records is a primary method of control. An annual audit of all Wisconsin dairy plants receiving milk from producers is conducted by a product accountability staff of the Wisconsin Department of Agriculture. This audit is accomplished by sampling eight geographic areas of the State at different times each year.

When requested, a plant must submit a detailed report of one month's operation listing all purchases of milk and dairy products which are manufactured by the plant. Federal milk market order plants---(both Grade A and Grade B), are exempt from this audit requirement. This first product audit report is used as a screening operation. If the plant shows sales of butterfat exceeding reported receipts of butterfat by 3 percent or more, it is placed on a list for further investigation. This additional investigation includes the pick up of composite samples of milk of all patrons of this plant for a retest at one of three District Laboratories.

Normally, testing by plants is done every 15 days, so both the first half and the second half of the month's composite samples are retested by the state, so that test results may be tied to a complete month's operation. During the same month, the intake or weigh tank will be sampled to determine whether sufficient agitation is present to give the operator a truly representative daily sample of the patron's milk.

At the time the inspector is picking up the composite sample, he will also take a physical inventory of equipment used by the dairy plant in sampling, storing, and testing of parton's milk. If equipment or technique irregularities have occurred, the district testing technician will make an immediate follow-up to obtain compliance with Wisconsin sampling and testing requirements.

If the results of the two consecutive comparative retest results do not compare with the plant test within accepted tolerances, a 3-month product audit is conducted at the plant by department accountants. This audit covers the month before, the month after, and the month that the composite is retested by the state. If the audit shows a continued imbalance of purchases versus production, all evidence is studied to determine the causative factors.

(B) Minnesota: As part of the screening process in Minnesota's butterfat control program, all plants are required to complete and submit to the Department of Agriculture monthly and annual dairy reports. This report includes all milk and cream purchases, milk and cream inventories with butterfat content and production of all manufactured dairy products. These reports are checked to determine if irregularities in product accountability occur. Errors in reporting or discrepancies within the reports are among monthly reports call for additional investigation.

Minnesota has a 24 percent maximum overrun law for butter plants. This declares as illegal, an overrun figure in butter plants in excess of this amount. If plant records show a larger overrun, additional investigation is required. The additional investigation is similar to

that in Wisconsin. A complete input-outgo audit is required. All records on weights, butterfat tests, payrolls, and operations are thoroughly audited. Sampling and testing equipment are checked. Techniques of sampling and testing are observed. Retesting of the composite samples, with identities replaced by a code, by the state testing laboratories are required to determine if plant tests are within accepted tolerances.

Another phase of Minnesota's program is a routine audit of plant records. Dairy product inspectors operate in four areas of the state. A dairy product inspector is assigned to each area to audit plant records and check equipment in each plant in their area, at least once every two years. Also, the regular food inspector of the Department of Agriculture periodically checks dairy plants. They report any irregularities to the dairy inspection division.

Presently, many cheese buyers are running moisture and dry matter tests on every vat of cheese they buy, and are reporting this information on the cheese invoices. Similarly butter buyers are testing and reporting the fat test on each churning of butter. This information is extremely helpful in the product audit program, and in corrective action by the state, both educational and in court. It helps regulatory departments determine and prove whether more fat was actually sold than purchased during a given period.

(C) Both States: The procedures followed, once improper techniques or equipment or illegal practices are found, are similar in both states. Four courses of action may be undertaken. (1) An educational visit to the plant by departmental personnel may be undertaken. If the problem is a minor one of improper equipment or technique, this visit usually

resolves the problem. (2) An informal hearing may be held with the plant manager, testers and board of directors. Here personnel are instructed on procedures which are to be followed to assure proper testing and accounting for butterfat. The plant may be closely observed and supervised until proper testing and accounting procedures are assured. (3) A formal hearing can be called by the State Departments of Agriculture to permit plant representatives to show cause why the plant licenses should not be revoked. (4) The offenders may be charged in a court of law. For example, violation of the 24 percent overrun law in Minnesota is a misdemeanor. A person found guilty of violation this law is subject to fine and imprisonment.

Composite Retesting

In all cases where there are questions regarding a dairy plant's accountability for milk and butterfat, retesting of the plants composite samples is undertaken by the states. Both states routinely check random samples from the plants as a part of the regular screening process.

Split-sample Testing and Plant Retest Programs

Both Departments of Agriculture conduct year around programs to help assure accuracy in butterfat testing. In the Wisconsin program, each district state testing laboratory prepares a number of samples of known butterfat content for distribution to laboratories doing official testing for plants. The licensed testers are requested to test the samples and return the results to the district laboratories. All samples are coded, so that neighboring laboratory personnel are unable to "get together" on their results. At the same time the sets of samples are distributed, district dairy inspectors make a complete check of the equipment and facilities.

The results of this program have shown the plant laboratories to report both higher tests, and lower tests, than the control sample test. When this occurs techniques and equipment are corrected, so that deviations are minimized.

Minnesota does not use the split-sample method, but selects composite samples from randomly selected plants. These samples are coded so they can not be identified by the plants. They are then sent back to the plant laboratories to see if the original test can be duplicated. Here, also the technique, and testing equipment, is checked for irregularities which could cause testing error. Both methods provide information on the accuracy of the testing laboratories used by the plants.

Weighing and Measuring Milk

Any Wisconsin dairy plant found to have excessive product gain immediately has its intake scale checked by the weights and measures inspector of the Food Division. If the plant was using the bulk tank method of handling milk, the Department of Agriculture's farm milk tank specialist checks the tanks and makes a quantity control check with plant management.

In Minnesota, weights and measures are the responsibility of the Weights and Measures Division of the Railroad and Warehouse Commission. The Division has the responsibility for checking scales used by dairy plants about once every two years. The Division will also check the weighing equipment of a dairy plant at any time upon request of the Food Inspection Division of the Department of Agriculture. If a violation of the laws regarding scales and weighing of milk is found, violators can be prosecuted in court.

In both states, the dairy plants are responsible for the accuracy of their plant intake scales. The Wisconsin Department of Agriculture suggests that every plant intake scale be tested at least four times a year by a competent scale agency. Substantial strides have been made by privately operated scale services within the past few years in improving accuracy of plant intake scales.

Wisconsin has worked with farm milk tank installers to check their installation method and calibration procedures. Wisconsin's Department of Agriculture recommends that calibration of every newly installed tank be checked by a private agency immediately after installation at a farm, and again after one year.

Periodically, Wisconsin's weights and measures inspectors will select and weigh a number of bulk tank farm pick-up trucks. A comparison of the weight of the milk on the truck will be made with the total weight indicated on the pick-up tickets. Periodically, specific geographic areas of the state are selected and all farm milk tanks are tested in that area. Questions on installation are immediately reported to area tank installers.

Minnesota has no formal program for checking the measuring devices for farm bulk tanks. However, the Weights and Measures Division will investigate if complaints are registered with it on farm bulk tanks.

Complaints of High Pay Prices

Complaints from individual plant operators, groups of operators, and associations, questioning the ability of particular plants or groups of plants to pay "higher than normal" prices without having altered butterfat tests, are frequently received by Departments of Agriculture in Minnesota and Wisconsin.

Operations in question are personally audited by Departmental personnel, composite samples are retested, and the regular investigational routine for "problem plants" is carried out. In addition, cost analysis of the plants' operating records is made, to determine whether the prices paid can be justified.

Evaluation of State Programs Dealing with Accurate Payment for Milk

In general, personnel of the regulatory agencies in each state have the authority to effectively regulate dairy plant product accountability for products. However, both states have only small budgets and departments to perform this function. As a result irregularities in product accountability do exist.

It is obvious that many factors affect the prices which are reported and paid by dairy plants. The butterfat content of milk and milk products is also affected by many factors. Continuing surveillance of the industry is a large job. Considering the importance of the program both to the farmer and dairy industry, and the value of the products involved, a greater commitment of resources in operating the programs is justified.

Regulation of Data Reporting for Price Series

The Federal government does not require manufacturing grade milk plants to report value, quantity, or price data for use in computing various price series, nor does it have authority to do so. Instead the Federal-State Crop Reporting Service relies on the reporting requirements of the State Departments of Agriculture.

Both Minnesota and Wisconsin do have state laws which require reporting of values, prices, and quantities by dairy plants, and prescribe penalties for false reporting.

Section 32.18 of the Minnesota Statute states that, "Every person engaged in the purchase, manufacture, or sale of dairy products, and all dairy plants owner or operators shall keep in proper books true and full records of all milk, cream or butterfat, and other dairy products, and other dairy products manufactured, purchased, received, shipped, stored, or handled by them each day." Section 32.19 states that, ". . . Within 90 days following the close of each fiscal year and at such other times as the Commissioner (of Agriculture) may fix or require, by rules and regulation adopted as required by law, make and file with the commissioner, on blank form prepared by him, itemized and verified reports on all business transacted by him, as set out in Section 32.18, during the preceding fiscal year." Section 32.201 provides that, "Any person violating any of the provisions of Section 32.18 to 32.20 shall be guilty of a misdemeanor." These sections then make it mandatory for all dairy plants to report the data necessary in constructing milk price series.

Wisconsin also has statutes requiring reports from dairy plants for use in constructing price series. Since only annual reports are mandatory in Wisconsin, data for the current and preceding month, used in price estimates, are obtained from voluntary reports of the plants. Current month data are also obtained from voluntary reporting in Minnesota, but current data for the preceding month are obtained from mandatory reports. These data are part of those used in constructing the Minnesota-Wisconsin Price Series and other milk price series. Since some of the voluntary reports can be verified from the mandatory reports which are filed, false price reporting is less of a problem, than is accurate product accountability.

APPENDIX 1.

PRICES RECEIVED BY FARMERS
FOR MANUFACTURING GRADE MILK IN
MINNESOTA AND WISCONSIN, 1961-66

Prepared by the Statistical Reporting Service
U. S. Department of Agriculture ^{1/}

The Statistical Reporting Service of the U. S. Department of Agriculture publishes on or about the 5th of each month an estimate of the average price received by farmers and of the average milkfat test for milk of manufacturing grade for the preceding month for the two-State, Minnesota-Wisconsin area. For example, the price for August was reported on September 5.

These two States produce about half of the manufacturing grade milk marketed in the United States, and the estimates relate to prices paid to farmers for this milk. The estimates relate only to manufacturing grade milk purchased from farmers and do not include Grade A milk diverted to manufacturing uses. The price concept used is that represented by dividing total dollars paid to producers, before hauling costs are deducted, by the number of hundredweight of manufacturing grade milk purchased from farmers. This is an estimate of the average price for all milk manufacturing grade delivered in bulk tanks and in cans, f.o.b. plant or receiving station, before hauling costs are deducted. It includes bulk tank, quantity, or other premiums paid to producers, but excludes hauling subsidies.

Most of the basic and preliminary data needed for the preparation of the two-State average price and fat test of manufacturing grade milk are collected by the offices of the Federal-State Agricultural Statisticians in Minnesota and Wisconsin. These data come from regularly scheduled monthly reports submitted by plants manufacturing dairy products.

After these data are summarized and analyzed by the Federal-State Statisticians, they are forwarded to Washington, D. C. for final U. S. Crop Reporting Board review and consolidation into the two-State average price and test.

The price and test estimates for a given month are derived from two factors: (1) the estimated average price and test for the base month, which is the month preceding that to which the estimate relates, and (2) an estimate of change from the base month to the month to which the estimate relates.

^{1/} Based on SRS-11, November 1967.

Estimated Price and Test for Base Month

The level for the base month, which is used as the benchmark, is based on reports from about 260 plants in Wisconsin that purchase approximately 40 percent of all manufacturing grade milk sold by farmers in the State, and on reports from about 300 plants in Minnesota that purchase approximately 70 percent of all manufacturing grade milk sold by Minnesota farmers. These reports include information as to total dollars paid producers, total pounds of milk received from producers, and total pounds of milkfat received from producers.

The estimated monthly price and fat test for each State are weighted by the quantity of manufacturing grade milk purchased from farmers in that State. During the first half of any year these weights are based on data for the same month two years earlier. During the latter half of the year, weights are based on purchases for the corresponding month in the preceding year, since later data are available than during the first six months. The quantity weights for weighting data for each State in computing the two-State average price change each month and vary seasonally. In 1965, the average of the monthly volume weights for Wisconsin was 57 percent of the two-State total, and for Minnesota, 43 percent.

The 560 plants are well distributed geographically over both States, and represent all the major types of manufacturing grade milk processing plants. At the end of the year, reports from all manufacturing grade milk plants in each State indicate close agreement with the monthly prices derived from the 560 plants.

Estimate of Change from Base Month

The estimate of change from the base month to the month to which the estimate relates is based primarily on reports from a sample of 100 plants distributed in the two States. These plant reports are evaluated in terms of changes from the base month in wholesale prices of manufactured dairy products and historic price and fat test relationships. Estimated changes in price and fat test are applied to the State averages for the base month to estimate price and fat test for each State for the month to which the estimates relate.

The sample design for estimating change from the previous month allocated 36 of the 100 plants to Minnesota and 64 to Wisconsin. Each State was divided into three broad geographic areas--Northern, Central, and Southern, and plants in each area were classified according to type of products manufactured. Sample plants were drawn from each product class and geographic area in each State. Plants that consolidate or go out of business are replaced by the same kind of plant of approximately the same size in the same area.

In Minnesota, plants were classified originally into those making (1) butter and by-products and (2) other dairy products. Because of changing conditions, a new classification of Minnesota plants was made in 1963. Plants

were classified into (1) butter and by-products plants; (2) cheese factories; and (3) varied-products plants. Based on this method of classification, in 1966 the butter category accounted for 84 percent of all manufacturing grade milk in the State; cheese, 13 percent; and the varied-product group, 3 percent.

In Wisconsin, the plants were divided into four major product groups. In 1966, the proportion of manufacturing grade milk purchased in the State by these groups was: (1) cheese, 63 percent; (2) butter and by-products, 9 percent; (3) condenseries, 2 percent; and (4) varied-product plants, 26 percent.

In both Minnesota and Wisconsin, the varied product groups consist mostly of those plants which make butter, cheese, or other products in such proportions that they cannot be clearly classified in any one specific group such as primarily butter-making plants, primarily cheese-making plants, or condenseries.

These percentages are used as weights for combining reported price and milkfat test data by product groups for monthly manufacturing grade average price and milkfat estimates in each State. The percentages are based on final plant enumerations for the previous year and are changed once each year, or approximately 7 months after the close of the calendar year, when enumerated data become available.

Data are collected from the 100-plant sample by a special questionnaire mailed near the close of each month. This inquiry is designed to obtain from these plants for the base month and for the first half of the month to which the estimate relates (1) quantity of milk purchased, (2) quantity of fat included, (3) dollars paid, if available, (4) average price at average test, (5) related information such as quantities purchased in bulk and in cans, and the base price for 3.5 percent milk and point differentials for fat. Space also is provided on the inquiry for the plant manager's best estimate of the average fat test and milk price for the last half of the month to which the estimate relates. For condenseries, this procedure is modified to utilize quantity and price data for the base month furnished to the Statistical Reporting Service in Washington by the central offices of the condenseries and basic prices of 3.5 percent milk for the first half of the month to which the estimate relates as reported by Wisconsin condenseries to the Dairy Division of the Consumer and Marketing Service.

Publication

The report on price per hundredweight at the average test for a given month is issued about the 5th of the following month from the Chicago office of the Statistical Reporting Service, Room 1300-A, Main Post Office Building, 433 W. Van Buren Street, Chicago, Ill., 60797. This report is available on request. The price series is also published in the Dairy and Poultry Market News reports issued by several offices of the Dairy and Poultry Market News Service. In addition, the Market News Service reports show the price per hundredweight converted to a 3.5 percent basis.

Appendix Table 1 - Comparison of Minnesota-Wisconsin Manufacturing Grade Milk Price and Milkfat Test with the Two-State Average of Final Estimates, Beginning of Series through 1966, Average Price per Cwt. at Test.

Year and Month	Minnesota-Wisconsin Series		Final Two-State Estimate		Difference between Final Two-State price & Minn-Wis Series	
	Price	Milkfat	Price	Milkfat	Price	Milkfat
	per Cwt. Dols.	test Percent	per Cwt. Dols.	test Percent	per Cwt. Dols.	test Percent
<u>1961</u>						
August	3.36	3.63	3.35	3.61	-.01	-.02
September	3.44	3.71	3.45	3.71	+.01	----
October	3.50	3.77	3.51	3.77	+.01	----
November	3.49	3.74	3.50	3.74	+.01	----
December	3.44	3.68	3.45	3.68	+.01	----
<u>1962</u>						
January	3.39	3.63	3.40	3.63	+.01	----
February	3.34	3.57	3.35	3.59	+.01	+.02
March	3.28	3.59	3.26	3.58	-.02	-.01
April	3.09	3.56	3.10	3.58	+.01	+.02
May	3.06	3.57	3.08	3.59	+.02	+.02
June	3.07	3.58	3.06	3.56	-.01	-.02
July	3.10	3.60	3.09	3.59	-.01	-.01
August	3.14	3.64	3.11	3.61	-.03	-.03
September	3.21	3.72	3.21	3.73	----	+.01
October	3.27	3.78	3.28	3.78	+.01	----
November	3.27	3.74	3.28	3.75	+.01	+.01
December	3.24	3.68	3.25	3.69	+.01	+.01
<u>1963</u>						
January	3.18	3.61	3.21	3.63	+.03	+.02
February	3.16	3.59	3.18	3.59	+.02	----
March	3.13	3.56	3.15	3.56	+.02	----
April	3.12	3.55	3.12	3.53	----	-.02
May	3.10	3.54	3.13	3.55	+.03	+.01
June	3.11	3.54	3.11	3.52	----	-.02
July	3.14	3.57	3.14	3.54	----	-.03
August	3.17	3.60	3.18	3.59	+.01	-.01
September	3.25	3.68	3.27	3.69	+.02	+.01
October	3.33	3.76	3.32	3.72	-.01	-.04
November	3.30	3.70	3.33	3.71	+.03	+.01
December	3.28	3.67	3.31	3.68	+.03	+.01
<u>1964</u>						
January	3.25	3.62	3.26	3.61	+.01	-.01
February	3.20	3.56	3.21	3.55	+.01	-.01
March	3.17	3.53	3.18	3.55	+.01	+.02
April	3.15	3.54	3.16	3.55	+.01	+.01
May	3.16	3.55	3.16	3.56	----	+.01
June	3.14	3.54	3.12	3.52	-.02	-.02
July	3.15	3.55	3.14	3.52	-.01	-.03
August	3.20	3.57	3.21	3.57	+.01	----
September	3.37	3.68	3.39	3.70	+.02	+.02
October	3.45	3.75	3.46	3.73	+.01	-.02
November	3.44	3.70	3.47	3.71	+.03	+.01
December	3.40	3.66	3.41	3.67	+.01	+.01

Continued--

(continued)

Appendix Table 1 - Comparison of Minnesota-Wisconsin Manufacturing Grade Milk Price and Milkfat Test with the Two-State Average of Final Estimates, Beginning of Series through 1966, Average Price per Cwt. at Test.

Year and Month	Minnesota-Wisconsin Series		Final Two-State Estimate		Difference between Final Two-State price & Minn-Wis Series	
	Price per Cwt.	Milkfat test	Price per Cwt.	Milkfat test	Price per Cwt.	Milkfat test
	Dols.	Percent	Dols.	Percent	Dols.	Percent
<u>1965</u>						
January	3.33	3.62	3.31	3.60	-.02	-.02
February	3.26	3.56	3.27	3.58	+.01	+.02
March	3.26	3.55	3.26	3.58	----	+.03
April	3.27	3.56	3.26	3.57	-.01	+.01
May	3.26	3.56	3.26	3.56	----	+.02
June	3.24	3.55	3.24	3.55	----	----
July	3.25	3.56	3.25	3.57	----	+.01
August	3.32	3.60	3.33	3.60	+.01	----
September	3.43	3.69	3.50	3.76	+.07	+.07
October	3.55	3.78	3.58	3.78	+.03	----
November	3.57	3.74	3.61	3.72	+.04	-.02
December	3.61	3.68	3.64	3.67	+.03	-.01
<u>1966</u>						
January	3.56	3.62	3.58	3.63	+.02	+.01
February	3.65	3.59	3.68	3.59	+.03	----
March	3.73	3.57	3.74	3.57	+.01	----
April	3.68	3.56	3.70	3.57	+.02	+.01
May	3.70	3.57	3.74	3.56	+.04	-.01
June	3.86	3.55	3.84	3.52	-.02	-.03
July	4.09	3.55	4.15	3.54	+.06	-.01
August	4.35	3.60	4.38	3.60	+.03	----
September	4.51	3.69	4.51	3.69	----	----
October	4.48	3.76	4.48	3.78	----	+.02
November	4.35	3.75	4.38	3.77	+.03	+.02
December	4.32	3.73	4.30	3.72	-.02	-.01
<u>Simple Ave.</u>						
65 Months	3.4103	3.6277	3.4206	3.6283	.0103	.0006

APPENDIX 2

CONVERTING MANUFACTURING MILK PRICES AT AVERAGE PRICE
TO PRICES AT 3.5 PERCENT

The Minnesota-Wisconsin price and the U. S. "3-product" price are reported at the average butterfat test. For use in Federal orders, the price at average test is converted to a 3.5 percent basis using a butterfat differential. For example, the differential used in converting the Minnesota-Wisconsin price is calculated by multiplying the average price of Grade A (92-score) butter at Chicago by 0.120.

Butterfat differentials are used by most of the manufacturing plants in Minnesota and Wisconsin in adjusting prices to reflect differences in butterfat tests. Some plants, however, still use the direct ratio method. Of the 52 plants surveyed, only 10 adjusted prices on the direct ratio method. The differential used in Federal orders to convert the Minnesota-Wisconsin price to 3.5 percent averaged 7.2 cents per point in 1965, the same as the average butterfat differential of the 52 plants surveyed.

Converting the Minnesota-Wisconsin price to 3.5 percent using the specified butterfat differential method results in a higher price than that obtained by the direct ratio method.^{1/} It was two cents in 1963, 1964, and 1965 and four cents in 1966 and 1967. Monthly differences appear in Appendix Table 2. Since most plants adjust prices by butterfat differentials which are comparable to that used in adjusting the Minnesota-Wisconsin price, the amount that this method causes the announced 3.5 percent price to differ from the 3.5 percent price paid farmers is minimal.

^{1/} In the direct ratio method, the price at average test is divided by the average test and the resulting price per pound of butterfat is multiplied by 3.5 to obtain a 3.5 percent price.

APPENDIX TABLE 2

Average of prices received by farmers for manufacturing grade milk in Minnesota-Wisconsin converted to 3.5% butterfat test by using Chicago 92-score butter price times .120 and converted by direct ratio.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Simple Average
<u>Dollars per 100 pounds</u>													
<u>(Chicago 92-score butter x .120)</u>													
1961								3.27	3.29	3.30	3.31	3.31	3.26
1962	3.30	3.29	3.21	3.05	3.01	3.01	3.03	3.04	3.06	3.07	3.10	3.11	3.11
1963	3.10	3.10	3.09	3.08	3.07	3.08	3.09	3.10	3.12	3.15	3.16	3.16	3.11
1964	3.17	3.16	3.15	3.12	3.12	3.11	3.12	3.15	3.24	3.27	3.29	3.29	3.18
1965	3.25	3.22	3.22	3.23	3.22	3.20	3.21	3.25	3.29	3.34	3.39	3.47	3.27
1966	3.47	3.58	3.68	3.64	3.65	3.82	4.05	4.26	4.34	4.26	4.15	4.14	3.92
1967	4.08	4.02	4.01	3.98	3.96	3.96	3.95	3.97	3.97	3.98	4.00	4.04	3.99
<u>(Direct ratio)</u>													
1961								3.24	3.24	3.25	3.27	3.27	3.23
1962	3.27	3.28	3.20	3.04	3.00	3.00	3.01	3.02	3.02	3.03	3.06	3.08	3.08
1963	3.08	3.08	3.08	3.08	3.07	3.08	3.08	3.08	3.09	3.10	3.12	3.13	3.09
1964	3.14	3.15	3.14	3.12	3.12	3.10	3.10	3.14	3.21	3.22	3.26	3.25	3.16
1965	3.22	3.21	3.21	3.22	3.21	3.20	3.20	3.23	3.26	3.29	3.34	3.43	3.25
1966	3.44	3.56	3.66	3.62	3.63	3.80	4.03	4.23	4.28	4.17	4.06	4.05	3.88
1967	4.02	3.99	3.98	3.95	3.93	3.94	3.93	3.94	3.92	3.90	3.92	3.98	3.95
<u>(Ch. 92^o - butter x .120 over direct ratio)</u>													
1961								+.03	+.05	+.05	+.04	+.04	+.03
1962	+.03	+.01	+.01	+.01	+.01	+.01	+.02	+.02	+.04	+.04	+.04	+.03	+.03
1963	+.02	+.02	+.01	0	0	0	+.01	+.02	+.03	+.05	+.04	+.03	+.02
1964	+.03	+.01	+.01	0	0	+.01	+.02	+.01	+.03	+.05	+.03	+.04	+.02
1965	+.03	+.01	+.01	+.01	+.01	0	+.01	+.02	+.03	+.05	+.05	+.04	+.02
1966	+.03	+.02	+.02	+.02	+.02	+.02	+.02	+.03	+.06	+.09	+.09	+.09	+.04
1967	+.06	+.03	+.03	+.03	+.03	+.02	+.02	+.03	+.05	+.08	+.08	+.06	+.04

APPENDIX 3

PROCEDURE USED IN CALCULATING POUNDS OF
BUTTERFAT IN MANUFACTURED PRODUCTSButter

Overrun figures for butter manufacturing plants were used to calculate the quantity of butterfat required to produce the reported sales volume of butter of a given fat content. (See appendix table 3.) The overrun figures are based on the work of Professor L. C. Thompson of the Department of Dairy Industries at the University of Wisconsin. They represent carefully observed yields of butter manufacturing plants over a period of several years. They show, for example, that a whole milk creamery which produces butter of 80 percent fat has an actual overrun of 23.4131 percent.

Theoretically, if all fat in milk could be retained and made into butter with 80 percent butterfat the overrun would be 25 percent. The difference between actual overrun and 25 percent arises because of mechanical losses of butterfat and milk during the processing operation, butterfat loss in the skim milk in the separating operation, and butterfat loss in the buttermilk during the churning operation.

The following illustrates the calculation of required butterfat to produce a given quantity of butter. A whole milk plant has a butter production of 100,000 pounds as determined from sales invoices, less beginning inventory, plus ending inventory. The fat content of the butter, based on buyer laboratory reports, is 90.3. Appendix table A-1 lists overrun for a whole milk creamery with butter of 80.3 percent butterfat at 21.0518. The volume of butter 100,000 pounds, is divided by 1.210518 ($1 + .210518$) which results in a figure of 82,609, the pounds of butterfat in wholemilk required to produce the 100,000 pounds of butter. The plant had reported purchases of milk of 2,288,338 pounds of milk testing 3.63 percent butterfat (a total of 83,066.7 pounds of butterfat). Recalculating the actual fat results in a fat test of 3.61 ($82,609 \div 2,288,338$). Butterfat test error amount to and overstatement of .02. This plant would be paying a higher price for milk than it is reporting.

Cheese

Butterfat gain or loss for cheese plants was calculated by the use of a cheese yield formula. This formula, based on operating results and research of Van Slyke and Price,¹ is used for trade practice regulation by the Wisconsin State Department of Agriculture. The formula is as follows:

1/ Van Slyke, L. L. and W. V. Price, "Cheese," Orange Judd Publishing Co., Inc., New York, 1941, pp. 70-73.

$$\frac{(\% \text{ fat retention} \times \text{fat test}) + (\% \text{ casein in content} - .1)}{1.00 - \text{proportion of moisture in cheese}} \times 1.10 =$$

Yield of cheese per hundredweight of milk

Fat lost in whey usually averages about seven percent. The casein content of 3.5 percent butterfat milk is close to 2.30 percent and changes directly by .04 percent for each 1/10 of one percent change in the fat test. If the cheese has a 37 percent moisture content the above formula can be written as follows: (x is the butterfat content of the milk)

$$\frac{(.93)(x) + 2.30 + (x-3.5)(.4) - .1}{1.00 - .37} \times 1.10 = \text{cheese yield per hundredweight of milk}$$

For each plant, pounds of milk purchased and volume of cheese production were available. Given this information, the actual cheese yield per hundredweight of milk could be calculated from the above formula, and this figure in turn, made possible solving the above equation for the butterfat test of milk necessary to obtain the actual cheese yield.

Receiving Stations

Butterfat gain or loss for receiving stations was obtained by comparing butterfat purchases in milk from producers with butterfat in milk sales. The latter was adjusted for inventory.

Minor Products

Many plants had sales of minor products which contained fat. In some cases, the fat content was reported; therefore, it presented no problem. In other cases, the fat content was estimated on the basis of yield formulas.

APPENDIX TABLE 3
OVER-RUN CHART

<u>% Fat in Butter</u>	<u>% Over-run Gathered Cream Factory</u>	<u>% Over-run Whole Milk Factory</u>	<u>% Over-run Continuous Whole Milk System</u>
80.0	23.4131	21.5057	21.9644
80.1	23.2590	21.3540	21.8122
80.2	23.1055	21.2027	21.6603
80.3	22.9520	21.0518	21.5088
80.4	22.7991	20.9012	21.3577
80.5	22.6465	20.7510	21.2069
80.6	22.4944	20.6011	21.0565
80.7	22.3426	20.4517	20.9065
80.8	22.1912	20.3027	20.7569
80.9	22.0401	20.1539	20.6076
81.0	21.8894	20.0056	20.4587
81.1	21.7391	19.8577	20.3101
81.2	21.5892	19.7100	20.1620
81.3	21.4397	19.5628	20.0142
81.4	21.2905	19.4159	19.8667
81.5	21.1417	19.2694	19.7197
81.6	20.9932	19.1232	19.5729
81.7	20.8451	18.9774	19.4266
81.8	20.6974	18.8320	19.2806
81.9	20.5500	18.6869	19.1350
82.0	20.4030	18.5421	18.9897

APPENDIX 4

MULTIPLE REGRESSION ANALYSIS MEASURING RELATIONSHIP BETWEEN LEVEL OF
PAY PRICES AND VARIOUS PLANT OPERATING FACTORS

Analysis of the relationship between the plant pay price for milk and various plant operating factors discussed in Chapter 4 was undertaken with a statistical procedure. For most of the plant factors considered in the text, a step-wise multiple regression program was also used to determine and measure relationships that may exist. Equity ratios were not available for all plants, therefore, it was eliminated from the multiple regression program.

The step-wise multiple regression procedure was as follows: first, to eliminate the problem of intercorrelation, simple correlations among all the variables were calculated. For those with high correlation coefficient, one of the variables was eliminated from the multiple regression program. As a result, total pounds of whole milk received at the plant, butterfat test error as a percent of total butterfat, amount of butterfat test error on price, percent of total plant income from cheese sales, plant operating expense per hundredweight of milk, and total expense per hundredweight of milk were eliminated.

The step-wise multiple regression was then used to analyze the remaining data. This program begins by selecting that variable which accounted for the largest proportion of variance in milk pay prices and then calculates a simple regression equation. Then in order of importance in reducing the variance, it adds the other variables until all are included in the multiple - regression equation. In the program, no additional variables were included when inclusion of another failed to reduce total variation in pay price by more than 1 percent. The results of this program are presented in Appendix Table 4.

Only four factors entered the regression with a significant regression coefficient. They are, in order of importance in accounting for variation in pay price, the percent of plant income from butter, powder and their by-products, gain or loss on milk hauling, depreciation per hundredweight of milk, and net gain or loss on the entire plant operation.

Although the other plant factors did not enter the regression equation, this does not mean that they are not a component of milk price. Instead, the result of the regression implies that they are not significantly different for high paying plants than for low paying plants.

APPENDIX TABLE 4. RESPONSIVENESS OF PRICES PAID FARMERS FOR MILK DURING
GRADE MILK TO VARIOUS OPERATING FACTORS FOR 5 MINNESOTA
AND WISCONSIN DAIRY PLANTS, 1965.

Plant Factor	Effect of Plant Factor on Plant Milk Price ^{a/}	Standard Error of Regression Coefficient
	Dol. per cwt.	
Percent of income from butter and powder	-.00073	.00023
Gain or loss on hauling producers milk (dollar per hundredweight)	.59669	.27515
Depreciation per hundredweight of milk (dollars per hundredweight)	-.95154	.38947
Net gain or loss on entire operation (dollars per hundredweight)	-.51298	.24625
Percent of income from dairy products other than butter, powder, or cheese	-.00052	.00055
Seasonal variation in milk supply (May receipts a percent of November receipts)	-.00032	.00029
Total dividends per hundredweight of milk (dollars per hundredweight)	.33498	.28431
Gain or loss on milk operation (dollars per hundredweight)	.12633	.13463
Intercept = 3.37506		
$R^2 = .519$		

^{1/} The regression coefficients indicate the effect of unit changes in the various factors on reported farm milk prices paid by plants at 3.5 butter-fat test. Some unit changes in plant factors are on a percentage basis, some on a dollar basis and some on a volume basis. A plus sign indicates a price response in the same direction as the change in the plant variable, a minus sign indicates a price response in the opposite direction of a change in the plant variable. For example the figure .95145 for "depreciation" indicates that a \$1.00 increase in depreciation charge per hundredweight of milk would result in a \$.95 decrease in the plants price for milk.

PAMPHLET, "AGRICULTURAL PRICES, APRIL 1974"

DAIRY, POULTRY AND EGG PRICES
BY STATES
1972-1973

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1/ Revised monthly prices for the West North Central States, Montana, and U. S. will be published in Supplement No. 1 to the July 1974 Agricultural Prices to be released July 30, 1974.

2/ The revised U. S. meat animal prices: annual for 1972, annual and monthly for 1973 will be published in Supplement No. 1 to the May 1974 Agricultural Prices to be released May 31, 1974.

3/ The marketing year for broilers, chickens excluding broilers, and eggs is on a December through November basis. Turkeys are on a calendar year basis.

DAIRY PRODUCTS: Annual average price received by farmers,
by States, 1972 and 1973 1/

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State	Milk sold to plants, per cwt.						Milk retailed :		Milkfat	
	Eligible for		Manufacturing		All milk		by farmers,		in cream	
	fluid market 2/	grade	1972	1973	1972	1973	per quart	per quart	per pound	per pound
	1972	1973	1972	1973	1972	1973	1972	1973	1972	1973
	D o l l a r s						C e n t s			
Ala.	7.23	8.48	4.81	5.93	7.18	8.42	30.0	31.0	--	--
Alaska	11.30	11.90	--	--	11.30	11.90	37.0	37.0	--	--
Ariz.	6.92	7.86	--	--	6.92	7.86	27.0	30.0	--	--
Ark.	7.00	7.83	4.80	5.98	6.25	7.22	29.0	38.0	--	--
Calif. 6/	5.70	6.56	4.83	5.46	5.60	6.47	28.5	31.1	65	63
Colo.	6.84	7.86	--	--	6.78	7.80	30.0	32.0	62	62
Conn.	7.36	8.34	--	--	7.36	8.34	32.0	35.0	--	--
Del.	6.95	7.89	--	--	6.95	7.89	28.5	33.4	--	--
Fla.	7.94	9.34	--	--	7.94	9.34	28.4	32.9	--	--
Ga.	7.15	8.35	--	--	7.15	8.35	32.0	33.0	--	--
Hawaii	7/10.77	7/12.08	--	--	7/10.77	7/12.08	--	--	--	--
Idaho	5.47	6.48	5.04	6.08	5.15	6.19	22.0	31.0	65	61
Ill.	6.03	7.06	5.16	6.29	5.82	6.86	27.0	32.0	65	60
Ind.	6.35	7.37	4.78	5.57	6.11	7.09	26.0	31.0	71	72
Iowa	5.91	7.06	5.12	6.18	5.40	6.48	27.0	28.0	76	78
Kans.	6.27	7.27	4.98	6.06	6.07	7.04	27.0	33.5	69	68
Ky.	6.38	7.37	4.58	5.73	5.84	6.86	26.0	31.0	--	--
La.	7.12	8.25	--	--	7.12	8.25	34.0	35.0	--	--
Maine	7.30	8.23	--	--	7.30	8.23	34.0	36.0	--	--
Md.	6.92	7.88	--	--	6.92	7.88	29.5	33.4	--	--
Mass.	7.23	8.22	--	--	7.23	8.22	32.0	35.0	--	--
Mich.	6.33	7.33	4.96	5.93	6.18	7.18	30.0	38.0	71	78
Minn.	5.47	6.55	4.98	6.18	5.16	6.25	30.0	32.0	71	71
Miss.	6.94	7.94	4.70	5.60	6.77	7.80	27.0	31.0	--	--
Mo.	6.10	7.20	4.80	5.84	5.63	6.69	26.0	27.0	61	64
Mont.	6.12	6.96	4.36	5.22	5.93	6.76	31.0	28.0	64	68
Nebr.	6.10	7.25	5.08	6.30	5.57	6.80	28.0	32.0	61	59
Nev.	6.10	7.05	--	--	6.10	7.05	29.0	31.0	4/	4/
N. H.	7.10	8.12	--	--	7.10	8.12	32.0	35.0	--	--
N. J.	6.71	7.81	--	--	6.71	7.81	27.5	31.2	--	--
N. Mex.	7.05	8.02	--	--	7.05	8.02	33.0	36.0	--	--
N. Y.	6.34	7.32	--	--	6.34	7.32	30.0	32.0	--	--
N. C.	7.40	8.64	4.51	5.38	7.34	8.56	28.0	35.0	--	--
N. Dak.	5.60	6.70	4.90	6.01	5.15	6.25	30.0	32.0	68	68
Ohio	6.47	7.56	4.97	5.89	6.34	7.43	25.0	31.0	51	51
Okla.	6.47	8.01	4.84	5.83	6.21	7.75	26.0	32.0	68	67
Oreg.	6.45	7.38	5.50	6.07	6.25	7.14	23.2	29.0	67	63
Pa.	6.80	7.92	5.19	6.25	6.77	7.87	24.0	27.0	59	56
R. I.	7.11	8.17	--	--	7.11	8.17	34.0	36.0	--	--
S. C.	7.42	8.70	--	--	7.42	8.70	32.5	35.5	--	--
S. Dak.	5.90	6.90	5.03	6.15	5.25	6.31	27.0	32.0	69	69
Tenn.	6.48	7.60	4.58	5.65	6.00	7.15	30.0	38.0	--	--
Tex.	7.17	8.18	--	--	7.17	8.18	28.0	35.0	4/	4/
Utah	6.15	7.27	5.05	6.21	5.83	6.97	23.0	25.0	60	5/
Vt.	6.90	7.90	--	--	6.90	7.90	30.0	32.0	--	--
Va.	7.00	8.05	4.50	5.40	6.70	7.75	31.0	36.0	48	48
Wash.	6.15	7.10	--	--	6.15	7.10	27.0	30.0	66	64
W. Va.	6.70	7.75	--	--	6.60	7.65	30.0	37.0	45	42
Wis.	5.69	6.83	5.34	6.50	5.54	6.69	25.0	27.0	--	--
Wyo.	6.75	7.77	--	--	6.15	7.08	32.0	31.0	65	66
U. S.	6.38	7.42	3/5.08	3/6.16	6.07	7.14	27.8	31.1	67.5	67.9

1/ Milk prices for 1973 are revised only for those States listed in footnote 1, page 9. Other States preliminary. Milkfat in cream prices for 1973 are preliminary. U. S. prices for 1972 are revised. 2/ Includes surplus diverted to manufacturing. 3/ Includes data for some States not shown separately. 4/ Estimates discontinued 1972. 5/ Estimates discontinued 1973. 6/ Prices f.o.b. ranch. 7/ Includes milk sold direct to consumers.

Annual average fat test of milk sold by farmers, and annual average price received for milk cows, by States, 1972-73 1/

State	Fat test of milk sold to plants 2/						Milk cows	
	Eligible for		Manufacturing		All		per head	
	fluid market 3/		grade		milk			
	1972	1973	1972	1973	1972	1973	1972	1973
	Percent						Dollars	
Ala.	3.75	3.74	3.96	3.93	3.76	3.75	270	358
Alaska	3.69	3.65	--	--	3.69	3.65	469	531
Ariz.	3.50	3.51	--	--	3.50	3.51	315	337
Ark.	3.61	3.58	3.60	3.62	3.61	3.60	292	393
Calif.	3.57	3.59	3.69	3.71	3.58	3.60	497	573
Colo.	3.60	3.63	--	--	3.61	3.63	377	525
Conn.	3.70	3.71	--	--	3.70	3.71	420	523
Del.	3.72	3.68	--	--	3.72	3.69	346	472
Fla.	3.66	3.66	--	--	3.66	3.66	304	499
Ga.	3.67	3.65	--	--	3.67	3.65	305	411
Hawaii	3.38	3.39	--	--	3.38	3.39	--	--
Idaho	3.69	3.72	3.61	3.60	3.63	3.64	419	511
Ill.	3.70	3.68	3.65	3.61	3.69	3.66	340	404
Ind.	3.76	3.73	3.79	3.73	3.76	3.73	372	455
Iowa	3.73	3.74	3.65	3.63	3.67	3.66	370	460
Kans.	3.66	3.64	3.65	3.61	3.66	3.64	367	460
Ky.	3.72	3.71	3.79	3.73	3.74	3.72	310	419
La.	3.73	3.70	--	--	3.73	3.70	372	415
Maine	3.77	3.71	--	--	3.77	3.71	379	467
Md.	3.72	3.68	--	--	3.72	3.68	351	472
Mass.	3.71	3.65	--	--	3.71	3.65	427	519
Mich.	3.71	3.66	3.73	3.70	3.71	3.66	428	500
Minn.	3.64	3.65	3.58	3.56	3.60	3.60	427	528
Miss.	3.76	3.73	3.91	3.88	3.77	3.74	320	388
Mo.	3.58	3.67	3.69	3.67	3.62	3.67	314	444
Mont.	3.64	3.62	3.72	3.67	3.66	3.63	392	500
Nebr.	3.70	3.68	3.64	3.64	3.67	3.66	367	458
Nev.	3.58	3.61	--	--	3.58	3.61	350	438
N. H.	3.82	3.81	--	--	3.82	3.81	404	490
N. J.	3.66	3.70	--	--	3.66	3.70	485	562
N. Mex.	3.56	3.56	--	--	3.56	3.56	290	316
N. Y.	3.62	3.59	--	--	3.62	3.59	410	498
N. C.	3.71	3.71	4.13	4.13	3.73	3.72	261	318
N. Dak.	3.50	3.53	3.47	3.54	3.48	3.53	362	461
Ohio	3.75	3.70	3.78	3.75	3.75	3.71	368	510
Okla.	3.59	3.58	3.58	3.57	3.59	3.58	341	434
Oreg.	3.87	3.85	4.25	4.25	3.94	3.92	392	479
Pa.	3.73	3.71	3.70	3.67	3.73	3.71	500	609
R. I.	3.64	3.60	--	--	3.64	3.60	421	523
S. C.	3.85	3.84	--	--	3.83	3.84	279	404
S. Dak.	3.58	3.58	3.54	3.51	3.55	3.53	380	465
Tenn.	3.73	3.71	3.86	3.81	3.76	3.72	267	394
Texas	3.57	3.55	--	--	3.57	3.55	360	421
Utah	3.68	3.69	3.55	3.62	3.64	3.67	347	448
Vt.	3.77	3.72	--	--	3.77	3.72	416	504
Va.	3.65	3.65	3.82	3.77	3.67	3.66	272	348
Wash.	3.80	3.77	--	--	3.80	3.77	377	467
W. Va.	3.72	3.70	--	--	3.74	3.71	238	308
Wis.	3.73	3.71	3.71	3.71	3.73	3.71	457	573
Wyo.	3.61	3.63	--	--	3.60	3.64	329	398
U. S.	3.68	3.66	4/3.66	4/3.65	3.68	3.66	393	496

1/ Preliminary for 1973 except as indicated in footnote 1 on page 9; U. S. averages for 1972 revised.
 2/ Fat tests are comparable with milk prices published on page 2. 3/ Includes surplus diverted to manufacturing. 4/ Includes data for some States not shown separately.

MILK SOLD TO PLANTS, ALL (PRICE): Average price per 100 pounds received by farmers,
by States, monthly 1973 1/

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State	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual average
D o l l a r s													
Ala.	7.40	7.90	7.75	7.70	7.75	7.85	8.10	8.25	9.10	9.70	9.75	9.75	8.42
Alaska	11.55	11.60	11.65	11.50	11.60	11.50	11.55	11.95	12.00	12.55	12.75	12.70	11.90
Ariz.	7.50	7.55	7.50	7.30	7.25	7.25	7.25	7.75	8.25	8.45	8.95	9.15	7.86
Ark.	6.80	6.75	6.70	6.55	6.55	6.65	6.75	7.05	7.60	8.00	8.55	9.05	7.22
Calif. 2/	5.93	6.21	6.16	5.91	5.86	5.91	5.92	6.28	6.87	7.12	7.84	7.82	6.47
Colo.	7.34	7.35	7.28	7.26	7.27	7.20	7.25	7.65	8.10	8.55	9.10	9.53	7.80
Conn.	7.80	7.80	7.65	7.40	7.35	7.30	7.85	8.65	9.40	9.70	10.00	9.90	8.34
Del.	7.45	7.55	7.45	7.30	7.30	7.35	7.40	7.75	8.35	8.60	9.10	9.30	7.89
Fla.	8.35	8.45	8.40	8.70	8.70	8.75	8.80	9.90	10.25	10.80	10.70	11.00	9.34
Ga.	7.60	7.80	7.65	7.50	7.75	7.75	7.85	8.50	8.65	9.85	9.90	9.80	8.35
Hawaii	11.03	12.04	11.91	11.49	11.57	11.42	11.71	12.03	12.62	13.13	13.15	13.04	12.08
Idaho	5.58	5.56	5.54	5.57	5.52	5.57	5.66	6.25	6.86	7.29	7.55	7.83	6.19
Ill.	6.30	6.25	6.35	6.20	6.16	6.15	6.25	6.78	7.52	8.01	8.48	8.84	6.86
Ind.	6.51	6.55	6.55	6.24	6.25	6.20	6.30	7.10	7.75	8.51	8.87	8.91	7.09
Iowa	5.83	5.83	5.87	5.88	5.85	5.84	5.88	6.49	7.10	7.72	8.05	8.49	6.48
Kans.	6.40	6.50	6.50	6.50	6.35	6.40	6.50	6.95	7.50	7.90	8.40	8.90	7.04
Ky.	6.55	6.45	6.30	5.95	5.90	5.90	6.05	6.60	7.50	8.10	8.75	9.15	6.86
La.	7.80	7.65	7.45	7.30	7.45	7.65	7.80	8.35	9.45	9.50	9.50	10.15	8.25
Maine	7.80	7.80	7.75	7.50	7.50	7.50	7.85	8.35	9.00	9.30	9.75	9.70	8.23
Md.	7.45	7.50	7.45	7.30	7.25	7.30	7.35	7.75	8.35	8.60	9.10	9.30	7.88
Mass.	7.70	7.75	7.55	7.30	7.20	7.20	7.75	8.55	9.25	9.55	9.80	9.70	8.22
Mich.	6.55	6.60	6.70	6.55	6.55	6.60	6.60	7.10	7.70	8.20	8.55	8.60	7.18
Minn.	5.64	5.64	5.66	5.68	5.73	5.70	5.87	6.50	7.10	7.64	7.90	8.13	6.25
Miss.	7.47	7.40	7.33	7.09	6.91	7.01	7.14	7.67	8.52	9.09	9.30	9.50	7.80
Mo.	6.30	6.25	6.10	5.90	5.90	5.90	5.97	6.62	7.27	7.76	8.22	8.69	6.69
Mont.	6.25	6.40	6.65	6.20	6.41	6.18	6.49	6.84	7.02	7.47	7.04	8.32	6.76
Nebr.	6.20	6.20	6.20	6.15	6.00	6.00	6.15	6.65	7.40	8.20	8.40	8.60	6.80
Nev.	6.40	6.35	6.40	6.30	6.45	6.60	6.65	7.15	7.50	7.60	7.95	8.80	7.05
N. H.	7.65	7.70	7.40	7.20	7.05	7.05	7.65	8.55	9.25	9.55	9.80	9.60	8.12
N. J.	7.25	7.35	7.15	7.00	6.95	7.00	7.35	7.80	8.70	9.30	9.25	9.20	7.81
N. Mex.	7.60	7.60	7.50	7.50	7.50	7.55	7.60	7.85	8.35	8.55	9.10	9.55	8.02
N. Y.	6.80	6.85	6.60	6.35	6.30	6.30	6.90	7.80	8.50	8.75	8.90	8.70	7.32
N. C.	7.75	8.05	7.90	7.70	7.85	7.95	8.10	8.70	9.10	9.20	10.35	10.20	8.56
N. Dak.	5.60	5.59	5.60	5.56	5.55	5.50	5.65	6.20	7.15	7.70	8.05	8.25	6.25
Ohio	6.84	6.94	6.89	6.55	6.54	6.49	6.59	7.38	8.30	8.93	9.07	9.25	7.43
Okla.	7.00	7.00	6.90	6.75	6.80	6.95	7.15	8.05	8.80	9.20	9.60	9.50	7.75
Oreg.	6.89	6.83	6.71	6.55	6.49	6.52	6.57	7.06	7.84	7.98	8.47	8.58	7.14
Pa.	7.25	7.30	7.25	7.10	7.10	7.10	7.30	7.85	8.60	8.95	9.20	9.35	7.87
R. I.	7.70	7.70	7.50	7.25	7.10	7.05	7.70	8.55	9.25	9.55	9.90	9.70	8.17
S. C.	7.90	8.15	8.15	8.10	8.15	8.05	8.30	9.10	9.20	9.50	9.75	10.35	8.70
S. Dak.	5.70	5.65	5.70	5.65	5.65	5.65	5.80	6.45	7.15	7.55	7.85	8.20	6.31
Tenn.	6.55	6.70	6.50	6.40	6.35	6.45	6.60	7.05	7.45	8.60	8.95	9.05	7.15
Tex.	8.00	7.90	7.70	7.45	7.50	7.50	7.70	8.10	8.70	9.00	9.40	9.65	8.18
Utah	6.35	6.35	6.40	6.30	6.30	6.30	6.40	7.00	7.55	8.05	8.45	8.80	6.97
Vt.	7.40	7.45	7.20	6.90	6.85	6.80	7.45	8.30	9.05	9.35	9.55	9.35	7.90
Va.	7.20	7.30	7.25	7.15	7.00	7.05	7.15	7.75	8.20	8.55	9.25	9.35	7.75
Wash.	6.64	6.61	6.59	6.53	6.45	6.54	6.59	6.98	7.77	8.03	8.28	8.34	7.10
W. Va.	7.10	7.20	7.20	6.90	6.80	6.75	6.75	7.60	8.60	9.00	9.20	9.30	7.65
Wis.	5.96	5.94	5.99	6.07	6.08	6.09	6.13	6.72	7.45	7.97	8.24	8.52	6.69
Wyo.	6.75	6.70	6.65	6.60	6.50	6.40	6.50	6.80	7.30	8.10	8.55	8.80	7.08
U. S.	6.56	6.59	6.55	6.43	6.40	6.40	6.56	7.17	7.84	8.30	8.65	8.81	7.14

1/ Prices for some States and U. S. revised. See footnote 1 on page 9. 2/ Prices f.o.b. ranch.

MILK SOLD TO PLANTS, ALL (FAT TEST): Average fat test of milk sold by farmers, by States,
monthly, 1973 1/

1065a

State	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual av.
	Percent												
Ala.	3.93	3.91	3.73	3.72	3.67	3.65	3.62	3.60	3.65	3.74	3.88	3.86	3.75
Alaska	3.83	3.79	3.73	3.68	3.55	3.50	3.44	3.48	3.59	3.73	3.78	3.76	3.65
Ariz.	3.72	3.60	3.54	3.49	3.38	3.35	3.33	3.36	3.46	3.54	3.69	3.71	3.51
Ark.	3.85	3.71	3.57	3.49	3.44	3.47	3.48	3.47	3.60	3.66	3.72	3.78	3.60
Calif.	3.84	3.79	3.73	3.58	3.44	3.41	3.41	3.45	3.55	3.63	3.72	3.79	3.60
Colo.	3.80	3.74	3.66	3.64	3.53	3.43	3.39	3.47	3.60	3.72	3.80	3.83	3.63
Conn.	3.74	3.72	3.71	3.69	3.64	3.59	3.58	3.60	3.67	3.80	3.88	3.87	3.71
Del.	3.84	3.82	3.77	3.71	3.62	3.56	3.52	3.50	3.54	3.66	3.80	3.84	3.68
Fla.	3.74	3.71	3.60	3.58	3.57	3.57	3.63	3.68	3.70	3.68	3.73	3.78	3.66
Ga.	3.79	3.77	3.66	3.59	3.55	3.56	3.56	3.56	3.57	3.63	3.73	3.76	3.65
Hawaii	3.33	3.35	3.36	3.37	3.29	3.27	3.35	3.40	3.46	3.50	3.51	3.52	3.39
Idaho	3.89	3.79	3.68	3.59	3.49	3.44	3.43	3.45	3.61	3.74	3.83	3.90	3.64
Ill.	3.82	3.75	3.71	3.67	3.59	3.52	3.47	3.49	3.59	3.73	3.80	3.83	3.66
Ind.	3.91	3.83	3.72	3.76	3.67	3.57	3.55	3.57	3.64	3.74	3.89	3.92	3.73
Iowa	3.83	3.78	3.74	3.66	3.58	3.51	3.48	3.52	3.61	3.72	3.80	3.85	3.66
Kans.	3.94	3.83	3.71	3.67	3.54	3.43	3.38	3.42	3.52	3.67	3.72	3.82	3.64
Ky.	3.93	3.87	3.74	3.68	3.62	3.57	3.54	3.59	3.62	3.77	3.93	3.92	3.72
La.	3.87	3.73	3.61	3.60	3.60	3.64	3.66	3.68	3.74	3.75	3.81	3.81	3.70
Maine	3.79	3.75	3.72	3.67	3.68	3.65	3.62	3.60	3.67	3.80	3.85	3.78	3.71
Md.	3.84	3.82	3.77	3.71	3.62	3.56	3.52	3.50	3.54	3.66	3.80	3.84	3.68
Mass.	3.71	3.69	3.66	3.65	3.61	3.57	3.56	3.56	3.61	3.71	3.77	3.76	3.65
Mich.	3.79	3.76	3.72	3.69	3.63	3.60	3.51	3.50	3.53	3.65	3.78	3.82	3.66
Minn.	3.65	3.61	3.58	3.58	3.56	3.49	3.48	3.51	3.62	3.72	3.76	3.72	3.60
Miss.	3.94	3.81	3.75	3.63	3.62	3.60	3.62	3.65	3.75	3.81	3.87	3.90	3.74
Mo.	3.93	3.83	3.68	3.63	3.54	3.52	3.51	3.52	3.62	3.71	3.81	3.88	3.67
Mont.	3.85	3.75	3.66	3.58	3.51	3.47	3.44	3.48	3.60	3.77	3.81	3.80	3.63
Nebr.	3.91	3.83	3.74	3.68	3.55	3.44	3.41	3.44	3.58	3.77	3.83	3.92	3.66
Nev.	3.81	3.73	3.66	3.55	3.46	3.42	3.45	3.50	3.60	3.68	3.72	3.78	3.61
N. H.	3.87	3.85	3.81	3.79	3.79	3.75	3.73	3.73	3.78	3.87	3.91	3.88	3.81
N. J.	3.74	3.73	3.72	3.70	3.67	3.64	3.58	3.54	3.63	3.77	3.86	3.82	3.70
N. Mex.	3.77	3.66	3.61	3.55	3.46	3.41	3.40	3.42	3.50	3.57	3.63	3.71	3.56
N. Y.	3.62	3.61	3.60	3.57	3.57	3.54	3.52	3.53	3.57	3.66	3.69	3.66	3.59
N. C.	3.90	3.85	3.79	3.66	3.64	3.59	3.57	3.54	3.64	3.72	3.83	3.83	3.72
N. Dak.	3.68	3.60	3.56	3.49	3.41	3.34	3.37	3.45	3.58	3.68	3.73	3.72	3.53
Ohio	3.86	3.81	3.76	3.73	3.67	3.59	3.57	3.58	3.62	3.70	3.81	3.84	3.71
Okla.	3.79	3.73	3.60	3.49	3.39	3.41	3.41	3.44	3.57	3.66	3.73	3.79	3.58
Oreg.	4.10	3.99	3.91	3.83	3.76	3.78	3.78	3.81	3.92	4.03	4.13	4.14	3.92
Pa.	3.79	3.78	3.75	3.73	3.70	3.65	3.58	3.61	3.61	3.73	3.81	3.81	3.71
R. I.	3.65	3.63	3.62	3.62	3.55	3.50	3.49	3.53	3.57	3.63	3.76	3.74	3.60
S. C.	4.00	3.98	3.85	3.76	3.72	3.70	3.71	3.71	3.75	3.84	3.98	4.02	3.84
S. Dak.	3.67	3.59	3.58	3.56	3.42	3.31	3.33	3.38	3.50	3.64	3.72	3.72	3.53
Tenn.	3.91	3.87	3.76	3.69	3.62	3.59	3.62	3.61	3.65	3.76	3.86	3.88	3.72
Tex.	3.82	3.68	3.53	3.44	3.42	3.40	3.40	3.41	3.52	3.62	3.68	3.72	3.55
Utah	3.88	3.80	3.73	3.67	3.56	3.48	3.43	3.50	3.67	3.75	3.81	3.87	3.67
Vt.	3.75	3.74	3.71	3.69	3.72	3.67	3.64	3.63	3.72	3.82	3.82	3.77	3.72
Va.	3.77	3.79	3.70	3.66	3.59	3.56	3.54	3.54	3.57	3.68	3.77	3.80	3.66
Wash.	3.92	3.82	3.77	3.71	3.60	3.62	3.63	3.66	3.73	3.87	3.97	3.98	3.77
W. Va.	3.85	3.81	3.76	3.73	3.68	3.60	3.58	3.57	3.62	3.71	3.80	3.85	3.71
Wis.	3.77	3.73	3.70	3.71	3.68	3.64	3.60	3.60	3.70	3.82	3.86	3.78	3.71
Wyo.	3.88	3.80	3.72	3.68	3.58	3.42	3.41	3.42	3.64	3.71	3.82	3.77	3.64
U. S.	3.79	3.74	3.68	3.65	3.60	3.55	3.52	3.54	3.62	3.72	3.79	3.80	3.66

1/ Fat test for some States and U. S. are revised, See footnote 1 on page 9.

MILK, SOLD TO PLANTS, ELIGIBLE FOR FLUID MARKET (PRICE): Average price per 100 pounds received by farmers, by States, monthly, 1973 1/

1066a

State	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual average
D o l l a r s													
Ala.	7.45	7.95	7.80	7.75	7.80	7.90	8.15	8.30	9.15	9.75	9.80	9.80	8.48
Alaska	11.55	11.60	11.65	11.50	11.60	11.50	11.55	11.95	12.00	12.55	12.75	12.70	11.90
Ariz.	7.50	7.55	7.50	7.30	7.25	7.25	7.25	7.75	8.25	8.45	8.95	9.15	7.86
Ark.	7.40	7.40	7.35	7.20	7.25	7.35	7.35	7.55	8.15	8.50	9.05	9.55	7.83
Calif. 2/	6.02	6.31	6.26	6.01	5.96	6.01	6.00	6.37	6.95	7.18	7.94	7.91	6.56
Colo.	7.40	7.40	7.35	7.32	7.33	7.26	7.31	7.72	8.13	8.62	9.14	9.58	7.86
Conn.	7.80	7.80	7.65	7.40	7.35	7.30	7.85	8.65	9.40	9.70	10.00	9.90	8.34
Del.	7.45	7.55	7.45	7.30	7.30	7.35	7.40	7.75	8.35	8.60	9.10	9.30	7.89
Fla.	8.35	8.45	8.40	8.70	8.70	8.75	8.80	9.90	10.25	10.80	10.70	11.00	9.34
Ga.	7.60	7.80	7.65	7.50	7.75	7.75	7.85	8.50	8.65	9.85	9.90	9.80	8.35
Hawaii	11.03	12.04	11.91	11.49	11.57	11.42	11.71	12.03	12.62	13.13	13.15	13.04	12.08
Idaho	5.87	5.87	5.81	5.78	5.71	5.70	5.76	6.37	7.17	7.75	8.03	8.26	6.48
Ill.	6.55	6.50	6.65	6.45	6.31	6.33	6.42	6.94	7.68	8.14	8.62	9.03	7.06
Ind.	6.70	6.77	6.80	6.47	6.50	6.47	6.55	7.42	8.15	8.79	9.18	9.17	7.37
Iowa	6.50	6.51	6.50	6.45	6.42	6.43	6.45	6.93	7.59	8.01	8.47	8.92	7.06
Kans.	6.70	6.85	6.80	6.75	6.60	6.65	6.70	7.10	7.70	8.05	8.50	9.05	7.27
Ky.	7.05	6.95	6.85	6.35	6.30	6.35	6.55	7.15	8.05	8.50	9.10	9.55	7.37
La.	7.80	7.65	7.45	7.30	7.45	7.65	7.80	8.35	9.45	9.50	9.50	10.15	8.25
Maine	7.80	7.80	7.75	7.50	7.50	7.50	7.85	8.35	9.00	9.30	9.75	9.70	8.23
Md.	7.45	7.50	7.45	7.30	7.25	7.30	7.35	7.75	8.35	8.60	9.10	9.30	7.88
Mass.	7.70	7.75	7.55	7.30	7.20	7.20	7.75	8.55	9.25	9.55	9.80	9.70	8.22
Mich.	6.70	6.75	6.85	6.70	6.75	6.75	6.75	7.25	7.85	8.35	8.65	8.70	7.33
Minn.	5.93	5.93	5.95	5.96	6.01	6.03	6.12	6.54	7.06	7.73	8.09	8.43	6.55
Miss.	7.59	7.52	7.47	7.24	7.09	7.19	7.32	7.87	8.70	9.23	9.40	9.59	7.94
Mo.	6.85	6.80	6.65	6.40	6.25	6.35	6.40	7.00	7.80	8.20	8.70	9.30	7.20
Mont.	6.40	6.55	6.85	6.45	6.75	6.50	6.75	6.94	7.09	7.65	7.10	8.50	6.96
Nebr.	6.65	6.65	6.60	6.60	6.45	6.40	6.65	7.05	7.70	8.60	8.80	9.05	7.25
Nev.	6.40	6.35	6.40	6.30	6.45	6.60	6.65	7.15	7.50	7.60	7.95	8.80	7.05
N. H.	7.65	7.70	7.40	7.20	7.05	7.05	7.65	8.55	9.25	9.55	9.80	9.60	8.12
N. J.	7.25	7.35	7.15	7.00	6.95	7.00	7.35	7.80	8.70	9.30	9.25	9.20	7.81
N. Mex.	7.60	7.60	7.50	7.50	7.50	7.55	7.60	7.85	8.35	8.55	9.10	9.55	8.02
N. Y.	6.80	6.85	6.60	6.35	6.30	6.30	6.90	7.80	8.50	8.75	8.90	8.70	7.32
N. C.	7.80	8.10	6.00	7.75	7.95	8.05	8.20	8.80	9.20	9.30	10.40	10.25	8.64
N. Dak.	6.10	6.10	6.10	6.05	6.05	6.00	6.10	6.55	7.40	7.95	8.20	8.50	6.70
Ohio	6.95	7.05	7.00	6.65	6.65	6.60	6.70	7.55	8.50	9.15	9.25	9.40	7.55
Okla.	7.25	7.25	7.10	7.00	7.05	7.20	7.40	8.30	9.10	9.45	9.80	9.70	8.01
Oreg.	7.05	7.00	6.90	6.80	6.75	6.75	6.75	7.30	8.10	8.20	8.70	8.75	7.38
Pa.	7.30	7.35	7.30	7.15	7.13	7.15	7.35	7.85	8.65	9.00	9.25	9.40	7.92
R. I.	7.70	7.70	7.50	7.25	7.10	7.05	7.70	8.55	9.25	9.55	9.90	9.70	8.17
S. C.	7.90	8.15	8.15	8.10	8.15	8.05	8.30	9.10	9.20	9.50	9.75	10.35	8.70
S. Dak.	6.35	6.40	6.35	6.35	6.30	6.25	6.30	6.75	7.45	7.85	8.20	8.60	6.90
Tenn.	6.90	7.05	6.90	6.80	6.85	6.95	7.10	7.60	7.90	9.00	9.30	9.35	7.60
Texas	8.00	7.90	7.70	7.45	7.50	7.50	7.70	8.10	8.70	9.00	9.40	9.65	8.18
Utah	6.70	6.65	6.65	6.55	6.50	6.55	6.60	7.30	7.85	8.45	8.75	9.05	7.27
Vt.	7.40	7.45	7.20	6.90	6.85	6.80	7.45	8.30	9.05	9.35	9.55	9.35	7.90
Va.	7.40	7.55	7.50	7.40	7.40	7.40	7.50	8.15	8.60	8.80	9.40	9.50	8.05
Wash.	6.64	6.61	6.59	6.53	6.45	6.54	6.59	6.98	7.77	8.03	8.28	8.34	7.10
W. Va.	7.15	7.25	7.25	6.95	6.90	6.85	6.85	7.75	8.75	9.15	9.30	9.35	7.75
Wis.	6.10	6.08	6.13	6.20	6.20	6.22	6.25	6.85	7.60	8.11	8.35	8.64	6.83
Wyo.	7.30	7.25	7.20	7.15	7.10	7.05	7.15	7.55	8.20	9.10	9.30	9.40	7.77
U. S.	6.85	6.90	6.84	6.68	6.66	6.67	6.84	7.44	8.11	8.53	8.88	9.02	7.42

1/ Includes surplus fluid market grade milk diverted for manufacturing. Prices for some States and U. S. are revised. See footnote 1 on page 9. 2/ Prices f.o.b. ranch.

MILK, SOLD TO PLANTS, ELIGIBLE FOR FLUID MARKET (FAT TEST): Average fat test of milk sold by farmers, by States, monthly, 1973 1/

1067a

State	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual average
Percent													
Ala.	3.93	3.91	3.73	3.71	3.66	3.65	3.61	3.59	3.64	3.73	3.87	3.86	3.74
Alaska	3.83	3.79	3.73	3.68	3.55	3.50	3.44	3.48	3.59	3.73	3.78	3.76	3.65
Ariz.	3.72	3.60	3.54	3.49	3.38	3.35	3.33	3.36	3.46	3.54	3.69	3.71	3.51
Ark.	3.83	3.72	3.58	3.50	3.43	3.45	3.47	3.45	3.57	3.60	3.67	3.76	3.58
Calif.	3.83	3.78	3.72	3.57	3.43	3.40	3.40	3.44	3.54	3.62	3.70	3.79	3.59
Colo.	3.80	3.74	3.60	3.64	3.53	3.43	3.39	3.47	3.60	3.72	3.80	3.83	3.63
Conn.	3.74	3.72	3.71	3.69	3.64	3.59	3.58	3.60	3.67	3.80	3.88	3.87	3.71
Del.	3.84	3.82	3.77	3.71	3.62	3.56	3.52	3.50	3.54	3.66	3.80	3.84	3.68
Fla.	3.74	3.71	3.60	3.58	3.57	3.57	3.63	3.68	3.70	3.68	3.73	3.78	3.66
Ga.	3.79	3.77	3.66	3.59	3.55	3.56	3.56	3.56	3.57	3.63	3.73	3.76	3.65
Hawaii	3.33	3.35	3.36	3.37	3.29	3.27	3.35	3.40	3.46	3.50	3.51	3.52	3.39
Idaho	3.97	3.87	3.76	3.67	3.57	3.52	3.50	3.52	3.71	3.83	3.95	3.94	3.72
Ill.	3.83	3.76	3.72	3.68	3.61	3.55	3.49	3.51	3.62	3.75	3.82	3.86	3.68
Ind.	3.90	3.83	3.72	3.76	3.67	3.57	3.55	3.56	3.64	3.73	3.88	3.93	3.73
Iowa	3.88	3.82	3.77	3.76	3.68	3.58	3.53	3.55	3.68	3.81	3.88	3.95	3.74
Kans.	3.96	3.84	3.71	3.69	3.55	3.43	3.38	3.41	3.52	3.66	3.71	3.83	3.64
Ky.	3.92	3.87	3.77	3.71	3.62	3.58	3.54	3.56	3.58	3.70	3.84	3.91	3.71
La.	3.87	3.73	3.61	3.60	3.60	3.64	3.66	3.68	3.74	3.75	3.81	3.81	3.70
Maine	3.79	3.75	3.72	3.67	3.68	3.65	3.62	3.60	3.67	3.80	3.85	3.78	3.71
Md.	3.84	3.82	3.77	3.71	3.62	3.56	3.52	3.50	3.54	3.66	3.80	3.84	3.68
Mass.	3.71	3.69	3.66	3.65	3.61	3.57	3.56	3.56	3.61	3.71	3.77	3.76	3.65
Mich.	3.78	3.75	3.72	3.69	3.63	3.60	3.51	3.49	3.53	3.64	3.77	3.81	3.66
Minn.	3.69	3.66	3.64	3.63	3.62	3.55	3.52	3.55	3.69	3.74	3.80	3.76	3.65
Miss.	3.93	3.81	3.75	3.62	3.61	3.59	3.61	3.63	3.73	3.79	3.85	3.89	3.73
Mo.	3.94	3.83	3.72	3.67	3.55	3.51	3.48	3.48	3.58	3.67	3.77	3.87	3.67
Mont.	3.83	3.74	3.64	3.57	3.50	3.45	3.43	3.47	3.60	3.67	3.82	3.81	3.62
Nebr.	3.91	3.83	3.75	3.70	3.60	3.46	3.44	3.45	3.59	3.79	3.85	3.91	3.68
Nev.	3.81	3.73	3.66	3.55	3.46	3.42	3.45	3.50	3.60	3.68	3.72	3.78	3.61
N. H.	3.87	3.85	3.81	3.79	3.79	3.75	3.73	3.73	3.78	3.87	3.91	3.88	3.81
N. J.	3.74	3.73	3.72	3.70	3.67	3.64	3.58	3.54	3.63	3.79	3.86	3.82	3.70
N. Mex.	3.77	3.66	3.61	3.55	3.46	3.41	3.40	3.42	3.50	3.57	3.63	3.71	3.56
N. Y.	3.62	3.61	3.60	3.57	3.57	3.54	3.52	3.53	3.57	3.66	3.69	3.66	3.59
N. C.	3.90	3.85	3.79	3.65	3.63	3.58	3.56	3.53	3.62	3.71	3.82	3.82	3.71
N. Dak.	3.63	3.58	3.53	3.48	3.42	3.35	3.35	3.40	3.56	3.66	3.74	3.73	3.53
Ohio	3.85	3.81	3.76	3.73	3.67	3.59	3.56	3.57	3.61	3.69	3.80	3.83	3.70
Okla.	3.79	3.74	3.60	3.49	3.38	3.40	3.40	3.43	3.57	3.66	3.73	3.79	3.58
Oreg.	4.03	3.93	3.85	3.77	3.68	3.69	3.69	3.72	3.85	3.94	4.05	4.07	3.85
Pa.	3.79	3.78	3.75	3.73	3.70	3.65	3.58	3.61	3.61	3.73	3.81	3.81	3.71
R. I.	3.65	3.63	3.62	3.62	3.55	3.50	3.49	3.53	3.57	3.63	3.76	3.74	3.60
S. C.	4.00	3.98	3.85	3.76	3.72	3.70	3.71	3.71	3.75	3.84	3.98	4.02	3.84
S. Dak.	3.71	3.70	3.64	3.60	3.51	3.37	3.35	3.37	3.55	3.68	3.76	3.80	3.58
Tenn.	3.90	3.87	3.76	3.68	3.60	3.58	3.58	3.56	3.59	3.70	3.81	3.85	3.71
Texas	3.82	3.68	3.53	3.44	3.42	3.40	3.40	3.41	3.52	3.62	3.68	3.72	3.55
Utah	3.90	3.81	3.74	3.68	3.57	3.49	3.46	3.52	3.69	3.77	3.83	3.90	3.69
Vt.	3.75	3.74	3.71	3.69	3.72	3.67	3.64	3.63	3.72	3.82	3.82	3.77	3.72
Va.	3.76	3.79	3.70	3.66	3.59	3.55	3.52	3.52	3.55	3.64	3.74	3.78	3.65
Wash.	3.92	3.82	3.77	3.71	3.60	3.62	3.63	3.66	3.78	3.87	3.97	3.98	3.77
W. Va.	3.84	3.81	3.76	3.73	3.67	3.59	3.56	3.55	3.60	3.68	3.78	3.84	3.70
Wis.	3.77	3.73	3.70	3.71	3.68	3.63	3.58	3.60	3.70	3.82	3.87	3.80	3.71
Wyo.	3.84	3.76	3.68	3.64	3.55	3.42	3.37	3.46	3.63	3.72	3.83	3.79	3.63
U. S.	3.80	3.75	3.69	3.65	3.60	3.55	3.52	3.54	3.61	3.71	3.79	3.80	3.66

1/ Includes surplus fluid market grade milk diverted for manufacturing. Fat tests for some States, and U. S. are revised. See footnote 1 on page 9.

MILK, SOLD TO PLANTS, MANUFACTURING GRADE (PRICE): Average price per 100 pounds
received by farmers, by States, monthly, 1973 1/

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State	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual average
D o l l a r s													
Ala.	5.25	5.40	5.40	5.45	5.45	5.60	5.65	6.15	6.25	7.15	7.00	6.95	5.93
Ark.	5.25	5.25	5.25	5.30	5.40	5.45	5.65	6.15	6.50	6.93	7.30	7.70	5.98
Calif. 3/	5.14	5.20	5.14	5.00	4.94	4.96	5.11	5.33	5.94	6.39	6.57	6.62	5.46
Idaho	5.47	5.45	5.43	5.48	5.45	5.52	5.62	6.20	6.76	7.10	7.34	7.67	6.08
Ill.	5.50	5.50	5.55	5.65	5.76	5.70	5.90	6.30	6.96	7.55	7.98	8.12	6.29
Ind.	5.22	5.05	5.10	5.10	5.15	5.05	5.05	5.60	5.75	6.65	6.80	7.15	5.57
Iowa	5.48	5.49	5.56	5.61	5.59	5.57	5.59	6.25	6.83	7.55	7.80	8.21	6.18
Kans.	5.40	5.45	5.50	5.50	5.45	5.45	5.59	6.10	6.60	7.00	7.65	7.90	6.06
Ky.	4.95	4.95	4.95	5.05	5.05	5.10	5.15	5.70	6.35	7.15	7.65	7.80	5.73
Mich.	5.35	5.40	5.35	5.45	5.40	5.40	5.50	6.10	6.40	6.90	7.15	7.35	5.93
Minn.	5.45	5.45	5.48	5.51	5.56	5.51	5.72	6.47	7.13	7.59	7.78	7.95	6.18
Miss.	5.00	5.00	4.95	4.95	5.00	5.15	5.15	5.60	6.60	6.95	7.30	7.35	5.60
Mo.	5.15	5.10	5.05	5.15	5.35	5.30	5.35	6.05	6.45	6.90	7.25	7.40	5.84
Mont.	4.85	4.75	4.65	4.35	4.30	4.37	4.87	6.17	6.48	6.15	6.45	6.55	5.22
Nebr.	5.55	5.60	5.60	5.60	5.50	5.55	5.60	6.25	7.00	7.65	7.80	8.10	6.30
N. C.	4.90	4.80	4.75	4.70	4.75	4.85	5.00	5.35	5.65	5.75	7.65	7.95	5.38
N. Dak.	5.30	5.30	5.35	5.30	5.30	5.30	5.45	6.05	7.00	7.55	7.95	8.10	6.01
Ohio	5.41	5.45	5.46	5.46	5.47	5.48	5.58	5.81	6.24	6.67	6.99	7.30	5.89
Okla.	5.30	5.30	5.30	5.30	5.30	5.45	5.55	6.05	6.40	6.90	7.30	7.60	5.83
Oreg.	5.90	5.75	5.70	5.50	5.50	5.65	5.84	6.05	6.59	6.90	7.15	7.50	6.07
Pa.	5.80	5.80	5.85	5.85	5.83	5.80	5.85	6.70	7.20	7.35	7.20	7.10	6.25
S. Dak.	5.50	5.40	5.50	5.50	5.50	5.50	5.70	6.35	7.05	7.45	7.75	8.10	6.15
Tenn.	4.70	4.95	4.90	5.00	5.00	5.15	5.25	5.70	6.15	7.10	7.65	7.55	5.65
Utah	5.40	5.50	5.70	5.65	5.65	5.70	5.85	6.25	6.75	7.00	7.55	8.05	6.21
Va.	4.75	4.75	4.75	4.80	4.75	4.80	5.10	5.50	5.65	6.70	7.30	7.30	5.40
Wis.	5.77	5.76	5.82	5.90	5.93	5.93	5.97	6.55	7.24	7.77	8.07	8.35	6.50
U. S. 2/	5.40	5.49	5.53	5.57	5.58	5.60	5.67	6.24	6.86	7.42	7.70	7.97	6.16

1/ Prices for some States and U. S. are revised. See footnote 1 on page 9.

2/ Includes data for some States not shown separately.

3/ Prices f.o.b. ranch.

MILK, SOLD TO PLANTS, MANUFACTURING GRADE (FAT TEST): Average fat test of milk sold by farmers,
by States, monthly, 1973 1/

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State	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual average
P e r c e n t													
Ala.	3.96	4.05	3.84	3.94	3.91	3.70	3.86	3.77	3.95	4.12	4.20	4.04	3.93
Ark.	3.91	3.67	3.53	3.46	3.45	3.50	3.51	3.52	3.65	3.78	3.82	3.84	3.62
Calif.	3.91	3.84	3.79	3.64	3.55	3.52	3.54	3.60	3.70	3.79	3.87	3.92	3.71
Idaho	3.85	3.75	3.64	3.56	3.45	3.41	3.40	3.42	3.57	3.69	3.77	3.88	3.60
Ill.	3.81	3.71	3.67	3.63	3.53	3.43	3.42	3.44	3.50	3.68	3.74	3.89	3.61
Ind.	4.01	3.86	3.75	3.79	3.67	3.58	3.55	3.59	3.62	3.78	3.96	3.87	3.73
Iowa	3.81	3.76	3.73	3.62	3.54	3.48	3.45	3.51	3.57	3.66	3.75	3.79	3.63
Kans.	3.87	3.78	3.69	3.59	3.48	3.42	3.37	3.44	3.53	3.72	3.79	3.79	3.61
Ky.	3.95	3.85	3.68	3.60	3.61	3.55	3.52	3.65	3.70	3.95	4.20	3.96	3.73
Mich.	3.84	3.81	3.75	3.72	3.65	3.58	3.55	3.55	3.57	3.78	3.89	3.90	3.70
Minn.	3.63	3.57	3.55	3.55	3.53	3.45	3.45	3.49	3.58	3.70	3.74	3.69	3.57
Miss.	4.13	3.90	3.76	3.73	3.74	3.72	3.77	3.81	3.96	4.11	4.27	4.16	3.88
Mo.	3.90	3.82	3.60	3.57	3.52	3.54	3.56	3.57	3.68	3.80	3.88	3.90	3.67
Mont.	4.00	3.89	3.80	3.68	3.55	3.57	3.52	3.53	3.64	3.69	3.73	3.71	3.67
Nebr.	3.92	3.81	3.72	3.65	3.49	3.41	3.38	3.43	3.57	3.74	3.81	3.94	3.64
N. C.	4.32	4.17	4.03	3.97	3.97	4.00	3.96	4.02	4.18	4.42	4.51	4.49	4.13
N. Dak.	3.71	3.61	3.57	3.50	3.40	3.33	3.38	3.47	3.59	3.70	3.72	3.72	3.54
Ohio	3.92	3.86	3.80	3.74	3.68	3.64	3.63	3.66	3.71	3.79	3.90	3.91	3.75
Okla.	3.82	3.70	3.56	3.47	3.42	3.46	3.46	3.49	3.59	3.70	3.71	3.74	3.57
Oreg.	4.54	4.35	4.20	4.08	4.05	4.10	4.13	4.17	4.25	4.45	4.60	4.60	4.25
Pa.	3.77	3.75	3.69	3.68	3.66	3.56	3.51	3.60	3.67	3.74	3.79	3.75	3.67
S. Dak.	3.66	3.55	3.56	3.55	3.40	3.30	3.33	3.38	3.48	3.62	3.70	3.70	3.51
Tenn.	3.95	3.85	3.77	3.72	3.69	3.71	3.72	3.76	3.81	4.01	4.08	4.01	3.81
Utah	3.85	3.79	3.72	3.63	3.52	3.45	3.42	3.44	3.59	3.67	3.75	3.79	3.62
Va.	3.94	3.89	3.74	3.67	3.62	3.64	3.65	3.68	3.76	3.99	4.07	4.05	3.77
Wis.	3.77	3.73	3.70	3.71	3.68	3.66	3.62	3.61	3.71	3.82	3.85	3.76	3.71
U. S. 2/	3.77	3.70	3.65	3.63	3.58	3.54	3.52	3.55	3.64	3.76	3.81	3.79	3.65

1/ Milk prices and fat test shown on pages 2 to 9 are revised where necessary for the U. S., and for the following States: Alaska, Ariz., Calif., Del., Fla., Ga., Hawaii, Idaho, La., Md., Miss., Nebr., Nev., N. J., N. Mex., Ohio, Okla., Oreg., S. C., Tenn., Texas, Utah, Va., W. Va., and Wyo. Revised 1973 milk prices and fat tests for the remaining States will be published in Supplement No. 1 to the July 1974 issue of AGRICULTURAL PRICES. 2/ Includes data for some States not shown separately.

Note: Wholesale milk prices shown on page 12 of current issues of AGRICULTURAL PRICES and on pages 2, 4, 6 and 8 of this Supplement relate to average price for the month, including premium payments and before hauling charges are deducted.

POULTRY AND EGGS: Marketing year average prices received by farmers, by States
1972 and 1973 1/

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State	Chickens, excl. broilers		Broilers		Eggs 2/		Turkeys	
	per lb.		per lb.		per dozen		per lb.	
	1972	1973	1972	1973	1972	1973	1972	1973
	C e n t s							
Ala.	8.5	14.2	3/13.1	3/23.4	34.1	53.1	22.0	31.2
Alaska	18.5	19.0	--	--	90.0	95.0	--	--
Ariz.	5.5	12.9	--	--	26.3	50.6	34.0	46.0
Ark.	9.8	14.5	3/13.7	3/23.7	36.1	55.9	22.5	33.5
Calif.	5.4	13.5	17.5	24.7	28.1	50.6	21.8	38.4
Colo.	6.5	14.5	--	--	33.5	56.2	25.0	43.0
Conn.	9.5	15.4	3/16.2	3/25.5	50.3	72.6	34.0	62.0
Del.	13.3	17.2	15.7	23.8	21.8	65.8	22.0	35.4
Fla.	6.0	12.9	13.3	23.1	28.9	46.5	20.0	30.0
Ga.	9.4	17.4	3/13.1	3/23.9	35.3	56.3	23.5	32.0
Hawaii	10.0	14.5	33.5	39.5	47.0	65.0	--	--
Idaho	5.0	12.0	5/	5/	33.0	55.9	21.0	--
Ill.	6.3	9.6	--	--	25.3	44.0	27.4	43.0
Ind.	7.1	13.6	14.4	22.9	29.0	50.8	24.4	36.0
Iowa	6.5	11.8	4/28.0	4/40.0	23.5	43.8	22.2	41.0
Kans.	4.5	8.0	15.6	23.4	21.1	40.3	23.1	43.0
Ky.	9.9	14.8	13.5	24.0	29.0	50.6	22.0	38.0
La.	8.5	15.3	13.9	24.1	32.1	54.4	26.0	35.0
Maine	9.5	15.4	3/16.2	3/25.5	39.8	60.1	34.0	64.0
Md.	11.2	17.0	15.7	23.8	45.3	65.7	22.0	35.6
Mass.	9.5	15.4	3/16.0	--	42.9	62.9	36.0	62.0
Mich.	8.5	11.8	4/18.5	--	26.3	49.6	22.4	39.0
Minn.	4.5	8.0	16.1	28.2	20.5	44.6	21.0	41.0
Miss.	10.6	18.3	3/13.2	3/23.5	40.2	60.3	23.0	--
Mo.	9.0	16.1	13.5	23.6	24.8	47.8	21.3	31.0
Mont.	6.0	10.5	--	--	36.8	57.8	25.0	52.0
Nebr.	3.9	7.5	17.5	28.2	18.8	37.4	19.6	42.0
Nev.	5.8	14.6	--	--	30.1	53.7	--	--
N. H.	9.5	15.4	--	--	44.9	64.0	35.0	64.0
N. J.	8.7	15.2	4/30.0	4/39.0	35.4	58.7	43.0	54.0
N. Mex.	6.0	14.0	--	--	35.9	57.6	25.0	--
N. Y.	7.8	12.6	4/23.0	4/31.0	31.2	54.4	30.0	43.0
N. C.	11.3	19.7	13.9	24.5	34.4	58.9	22.4	38.1
N. Dak.	4.5	6.6	--	--	21.7	35.9	21.8	40.0
Ohio	9.8	13.7	13.3	23.5	25.8	47.9	23.0	44.4
Okla.	8.1	12.5	13.8	24.0	31.6	50.7	21.0	35.0
Oreg.	4.0	11.3	17.6	25.0	33.0	53.9	22.0	44.5
Pa.	14.5	20.6	16.4	27.5	30.5	50.9	25.2	36.0
R. I.	9.5	15.4	--	--	49.2	71.0	35.5	62.0
S. C.	8.0	15.1	13.2	23.6	30.2	53.4	21.7	29.5
S. Dak.	4.0	8.5	--	--	18.0	36.8	21.0	42.0
Tenn.	10.0	15.7	3/13.1	3/22.7	37.0	56.4	21.5	34.0
Texas	10.4	17.5	14.2	22.8	33.7	55.5	21.1	39.7
Utah	5.6	12.0	--	--	27.8	48.9	21.5	43.0
Vt.	9.5	15.4	3/16.5	--	41.6	61.3	35.0	59.0
Va.	10.8	16.3	3/15.1	3/23.7	41.0	58.5	22.5	37.0
Wash.	4.7	12.5	18.4	26.6	26.5	50.5	21.0	50.0
W. Va.	11.4	13.2	12.5	23.3	35.6	58.2	21.3	29.8
Wis.	8.5	13.3	15.1	26.0	25.9	50.9	22.2	36.0
Wyo.	6.0	15.5	--	--	35.9	55.4	23.0	40.0
U. S.	9.0	15.0	14.1	24.0	30.9	52.5	22.2	38.2

1/ The marketing year for broilers, chickens excluding broilers, and eggs is on a December through November basis, except for turkeys. 2/ Average of all eggs sold by farmers including hatching eggs and eggs sold retail. 3/ Live weight equivalent price. 4/ Prices reflect a relatively larger proportion of heavy birds than in other States. 5/ Idaho combined with Oregon to avoid disclosure of individual operations.

BROILERS: Monthly and marketing year average price per pound received by farmers, by States, December 1972-November 1973 1/

1071a

1973													Mkt.
State	1972	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	yr.
	Dec.												av.
C e n t s													
Ala.	13.0	16.5	18.5	22.5	25.5	23.5	24.0	26.0	36.0	30.0	24.0	17.0	23.4
Alaska	--	--	--	--	--	--	--	--	--	--	--	--	--
Ark.	15.0	17.0	20.0	24.0	25.0	23.5	24.0	29.0	37.0	26.0	22.5	19.5	23.7
Calif.	18.5	19.5	21.0	22.5	24.0	24.0	23.5	26.5	33.5	31.5	26.0	23.0	24.7
Conn. 2/	15.5	19.0	22.0	25.0	27.5	25.5	26.0	30.0	39.0	29.5	25.0	21.0	25.5
Del.	15.5	18.5	20.0	23.0	25.5	23.0	24.5	26.5	35.0	29.0	24.0	19.0	23.8
Fla.	12.5	16.5	21.0	20.5	25.5	25.0	25.0	27.0	32.0	29.5	24.0	18.0	23.1
Ga.	14.0	16.5	20.5	22.5	25.0	23.5	23.5	30.0	37.0	33.0	21.5	18.5	23.9
Hawaii	35.0	35.0	36.5	37.5	38.5	40.0	40.5	42.0	42.5	44.0	42.5	41.0	39.5
Ind.	14.5	14.0	16.0	18.5	18.0	22.0	22.0	22.0	40.5	30.0	27.5	25.0	22.9
Iowa	--	--	--	--	--	--	--	--	--	--	--	--	40.0
Kans.	--	--	--	--	--	--	--	--	--	--	--	--	23.4
Ky.	--	--	--	--	--	--	--	--	--	--	--	--	24.0
La.	14.5	17.5	21.0	23.0	26.5	24.0	24.0	28.0	38.5	29.0	23.0	20.5	24.1
Maine 2/	15.5	19.0	22.0	25.0	27.5	25.5	26.0	30.0	39.0	29.5	25.0	21.0	25.5
Md.	15.5	18.5	20.0	23.0	25.5	23.0	24.5	26.5	35.0	29.0	24.0	19.0	23.8
Mass.	--	--	--	--	--	--	--	--	--	--	--	--	25.5
Mich. 3/	--	--	--	--	--	--	--	--	--	--	--	--	27.6
Minn.	--	--	--	--	--	--	--	--	--	--	--	--	26.2
Miss.	13.5	17.0	20.0	24.0	24.5	23.5	23.5	28.5	37.0	28.0	22.5	19.0	23.5
Mo.	14.0	17.0	18.5	22.0	24.5	24.0	25.0	25.0	39.0	29.0	23.5	19.5	23.6
Nebr.	--	--	--	--	--	--	--	--	--	--	--	--	28.2
N. J. 3/	--	--	--	--	--	--	--	--	--	--	--	--	39.0
N. Y. 3/	--	--	--	--	--	--	--	--	--	--	--	--	31.0
N. C.	13.5	17.0	19.0	23.0	26.0	25.0	25.5	27.5	40.5	31.0	26.0	19.5	24.5
Ohio	13.0	16.5	21.0	21.0	25.5	24.0	24.5	27.0	35.5	30.5	21.0	18.5	23.5
Okla.	14.0	17.0	18.0	22.0	25.5	24.0	24.0	25.5	39.5	28.5	25.0	22.0	24.0
Oreg.	18.5	19.5	19.5	21.0	22.0	22.0	24.0	24.0	34.0	34.0	30.5	30.0	25.0
Pa.	16.0	19.0	20.0	26.0	28.0	28.0	28.5	30.5	35.5	35.0	32.5	30.0	27.5
S. C.	13.0	16.5	18.5	23.5	25.5	23.5	23.5	25.5	40.0	31.0	23.5	18.5	23.6
Tenn.	12.0	16.0	20.5	20.0	25.5	24.0	23.5	26.5	34.0	29.0	23.5	16.5	22.7
Texas	14.0	16.0	19.0	24.0	24.0	23.5	23.5	24.5	32.0	30.0	23.0	19.0	22.8
Va.	14.5	17.0	19.0	23.5	24.5	22.5	25.0	27.0	35.5	30.5	23.5	20.5	23.7
Wash.	19.0	21.0	22.0	24.5	24.5	24.5	25.0	26.0	34.0	30.0	27.0	25.0	26.6
W. Va.	14.5	17.0	19.0	23.5	24.5	22.5	25.0	27.0	35.5	30.5	23.5	20.5	23.3
Wis.	17.5	20.0	21.0	25.0	27.0	27.0	26.0	30.0	39.0	31.0	26.5	20.5	26.0
U. S. 4/	14.4	17.2	19.8	23.2	25.2	23.8	24.3	27.6	36.5	29.7	23.7	19.4	24.0

1/ Revised.

2/ Live weight equivalent price.

3/ Prices reflect a relatively larger proportion of heavy birds than in other States.

4/ Includes data for some States not shown separately.

5/ Idaho included with Oregon to avoid disclosing individual operations.

CHICKENS EXCLUDING BROILERS: Monthly and marketing year average price per pound received by farmers, by States, December 1972-November 1973 1/

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State	1973												Mkt. Yr. Av.
	1972 : Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	
	Cents												
Ala.	10.0	8.5	10.0	15.0	17.5	18.5	16.5	16.0	29.0	24.0	18.0	18.0	14.2
Alaska	-	-	-	-	-	-	-	-	-	-	-	-	19.0
Ariz.	7.0	8.0	8.0	8.5	10.5	11.0	12.0	12.5	12.5	20.0	19.0	13.5	12.9
Ark.	11.0	12.0	12.0	12.5	14.0	15.0	15.0	15.0	23.5	23.5	20.0	17.0	14.5
Calif.	8.5	9.0	9.0	9.0	11.5	13.5	15.0	15.5	19.0	22.0	19.0	15.0	13.5
Colo.	-	-	-	-	-	-	-	-	-	-	-	-	14.5
Conn.	10.5	10.5	10.0	12.5	12.5	16.0	16.5	16.0	25.0	25.0	20.0	17.0	15.4
Del.	13.0	10.0	12.0	15.0	16.5	19.5	15.0	15.5	28.0	24.0	20.0	20.0	17.2
Fla.	6.5	6.5	7.0	8.0	13.0	15.5	15.5	15.0	24.0	22.0	18.0	14.0	12.9
Ga.	13.5	11.0	11.5	15.0	16.5	18.5	16.5	17.5	28.0	25.0	20.5	20.0	17.4
Hawaii	9.0	9.5	8.0	13.5	12.0	14.5	15.5	14.5	19.5	24.0	24.5	19.5	14.5
Idaho	-	-	-	-	-	-	-	-	-	-	-	-	12.0
Ill.	6.5	6.5	6.5	7.5	7.5	8.5	8.5	10.0	13.5	14.0	14.0	13.5	9.6
Ind.	7.0	7.5	8.0	8.5	12.5	14.5	15.0	15.0	22.0	22.0	18.0	16.0	13.6
Iowa	6.5	6.5	6.5	7.5	11.0	12.0	13.0	13.0	19.0	20.0	15.5	11.0	11.8
Kans.	5.0	5.5	6.0	6.0	6.0	6.5	6.5	8.0	9.0	10.0	11.5	12.0	8.0
Kv.	9.0	10.0	10.0	11.5	13.5	14.0	14.5	15.5	21.5	19.5	17.0	15.0	14.8
La.	11.0	10.5	12.0	13.5	15.5	16.5	17.0	15.0	20.0	23.0	17.5	18.0	15.3
Maine	10.5	10.5	10.0	12.5	12.5	16.0	16.5	16.0	25.0	25.0	20.0	17.0	15.4
Md.	13.0	10.0	12.0	15.0	16.5	19.5	15.0	15.5	28.0	24.0	20.0	20.0	17.0
Mass.	10.5	10.5	10.0	12.5	12.5	16.0	16.5	16.0	25.0	25.0	20.0	17.0	15.4
Mich.	8.5	8.5	8.0	8.0	10.0	11.0	13.0	13.0	18.0	13.0	16.0	13.0	11.8
Minn.	4.5	4.0	4.5	4.5	4.5	8.0	8.0	9.0	13.0	14.5	12.0	10.0	8.0
Miss.	5.5	10.5	13.0	16.0	18.0	20.0	15.0	18.5	30.0	24.5	19.0	21.0	18.3
Mo.	11.5	9.0	10.0	13.0	16.0	18.0	15.5	15.0	23.5	23.5	22.0	20.0	16.1
Mont.	-	-	-	-	-	-	-	-	-	-	-	-	10.5
Nebr.	4.5	4.5	4.5	5.0	7.0	7.5	8.0	8.0	11.0	12.5	11.0	9.0	7.5
Nev.	-	-	-	-	-	-	-	-	-	-	-	-	14.6
N. H.	10.5	10.5	10.0	12.5	12.5	16.0	16.5	16.0	25.0	25.0	20.0	17.0	15.4
N. J.	9.5	9.1	9.5	9.5	12.0	15.0	15.0	15.5	22.0	22.0	22.0	21.0	15.2
N. Mex.	-	-	-	-	-	-	-	-	-	-	-	-	14.0
N. Y.	7.0	7.0	7.5	8.0	10.5	12.5	13.5	13.5	19.0	21.0	17.0	13.5	12.6
N. C.	15.0	14.5	16.0	18.5	19.0	21.5	17.0	18.5	23.0	25.0	22.0	24.5	19.7
N. Dak.	4.5	4.5	4.5	4.5	6.0	6.0	6.0	6.0	6.0	6.0	8.0	10.0	6.6
Ohio	10.0	10.0	10.0	10.5	11.0	15.0	15.0	15.0	22.5	24.0	18.0	15.0	13.7
Okla.	10.0	9.0	9.5	10.0	11.5	11.0	12.0	13.0	19.0	18.0	17.0	15.0	12.5
Oreg.	7.0	7.0	7.0	8.0	8.0	8.0	12.0	12.0	14.0	18.0	18.0	18.0	11.3
Pa.	14.0	15.0	16.0	18.0	20.0	22.0	21.0	18.0	30.0	34.5	30.0	23.0	20.6
R. I.	10.5	10.5	10.0	12.5	12.5	16.0	16.5	16.0	25.0	25.0	20.0	17.0	15.1
S. C.	10.5	9.5	10.0	12.0	15.5	16.5	15.0	14.5	25.0	24.0	19.5	17.5	15.1
S. Dak.	5.0	4.5	4.5	5.0	4.5	5.5	8.5	12.5	15.0	16.0	13.0	10.5	8.5
Tenn.	11.0	10.5	11.0	12.5	13.5	14.5	13.5	14.0	22.5	24.0	22.0	20.0	15.7
Tex.	10.0	11.0	11.0	14.5	14.5	19.0	17.0	18.2	30.5	27.1	22.0	21.5	17.5
Utah	-	-	-	-	-	-	-	-	-	-	-	-	12.0
Vt.	10.5	10.5	10.0	12.5	12.5	16.0	16.5	16.0	25.0	25.0	20.0	17.0	15.4
Va.	13.0	12.5	14.0	12.5	17.0	18.0	15.0	14.5	26.0	23.5	19.0	16.5	16.3
Wash.	6.0	7.0	8.0	8.5	8.5	9.5	12.5	14.5	15.5	18.5	18.0	15.5	12.5
W. Va.	10.5	10.5	10.5	10.5	11.5	12.5	14.0	14.0	18.5	16.5	16.5	15.0	13.2
Wis.	9.5	10.0	10.0	12.0	12.0	15.0	14.0	14.0	18.0	22.0	22.0	21.5	13.3
Wyo.	7.5	8.0	9.0	9.5	11.5	15.0	16.0	15.6	17.5	19.5	17.0	15.0	15.5
U. S.	10.7	10.1	10.7	12.3	13.8	15.8	15.1	15.4	22.8	23.0	19.3	19.8	15.0

EGGS: Monthly and marketing year average price per dozen received by farmers, by States, December 1972-November 1973 1/

1073a

State	1973												Mkt. yr. av.
	1972 Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	
	C e n t s												
Ala.	46.0	49.0	41.0	48.0	46.0	45.0	54.2	49.7	70.3	65.0	62.1	61.6	53.1
Alaska	95.0	--	--	95.0	--	--	95.0	--	--	95.0	--	--	95.0
Ariz.	44.0	51.0	45.0	48.0	48.0	44.0	45.0	43.0	70.3	62.0	55.0	56.0	50.6
Ark.	42.0	50.0	45.2	49.6	49.2	50.2	55.0	54.2	62.6	64.2	64.4	64.9	55.9
Calif.	42.2	50.1	44.8	46.1	47.3	42.9	47.0	44.1	63.7	62.1	55.4	56.0	50.6
Colo.	52.0	54.0	45.0	50.0	50.0	48.0	53.0	55.0	73.0	66.0	60.0	62.0	56.2
Conn.	67.0	69.0	59.0	63.0	65.0	67.0	75.0	77.0	90.0	85.0	78.0	80.0	72.6
Del.	57.5	60.0	53.8	60.2	60.1	60.1	65.6	65.4	82.9	78.0	73.3	71.1	65.8
Fla.	40.1	44.0	37.3	40.5	40.3	39.4	43.8	48.4	62.2	56.3	52.0	53.4	46.5
Ga.	49.0	52.0	44.3	49.5	48.9	48.4	54.8	60.8	75.9	67.5	61.8	63.9	56.3
Hawaii	56.5	61.0	60.0	59.0	61.5	61.0	62.5	62.0	71.5	77.0	73.5	74.5	65.0
Idaho	47.1	55.0	50.4	55.4	52.6	51.5	51.2	47.9	70.0	66.6	61.1	60.8	55.9
Ill.	32.0	40.0	33.0	34.0	35.0	36.0	41.0	47.0	61.0	58.0	57.0	57.1	44.0
Ind.	38.0	49.0	45.0	44.0	45.3	43.5	47.3	48.4	72.5	63.0	60.0	55.6	50.8
Iowa	43.0	47.0	34.0	39.0	37.0	33.0	43.0	42.0	60.0	53.0	48.0	50.8	43.8
Kans.	30.0	35.0	31.0	36.0	34.0	33.0	41.0	40.0	60.0	53.0	49.0	47.0	40.7
Ky.	43.0	48.0	38.0	45.0	45.0	42.0	49.0	55.0	69.0	62.0	57.0	58.0	50.6
La.	48.5	52.5	43.5	49.5	47.5	45.5	53.5	56.5	72.5	65.0	60.5	61.5	54.4
Maine	56.0	58.0	47.0	50.0	51.0	52.0	62.0	64.0	77.0	72.0	64.0	66.0	60.1
Me.	57.5	60.0	53.8	60.2	60.1	60.1	65.6	65.4	82.4	78.0	73.3	71.1	65.7
Mass.	60.0	60.0	50.0	53.0	54.0	56.0	65.0	67.0	80.0	75.0	68.0	70.0	62.9
Mich.	58.8	62.9	33.4	44.1	41.3	36.7	46.8	46.8	62.4	55.5	51.4	55.0	49.6
Minn.	29.0	39.0	36.0	37.0	39.0	39.5	43.5	46.0	67.0	58.5	53.5	49.0	44.6
Miss.	54.0	61.5	44.5	57.8	56.7	56.0	52.7	59.5	77.3	72.6	67.8	64.4	60.3
Mo.	38.0	42.4	37.5	42.0	39.5	41.2	46.0	47.3	62.1	60.8	59.7	59.0	47.8
Mont.	48.0	53.0	50.0	54.0	53.0	52.0	55.0	54.0	72.2	69.5	64.6	67.6	57.8
Nebr.	26.0	30.0	29.0	31.0	32.0	32.0	38.0	39.0	53.0	52.0	47.0	43.0	37.4
Nev.	45.0	52.0	46.0	50.0	50.0	46.0	48.0	53.0	70.0	65.0	56.0	58.0	53.7
N. H.	58.0	63.0	54.0	57.0	58.0	56.0	64.0	66.0	79.0	75.0	69.0	70.0	64.0
N. J.	53.0	56.0	46.0	54.0	53.0	50.0	57.0	58.0	76.0	69.0	66.0	67.0	58.7
N. Mex.	51.0	58.0	51.0	55.0	54.0	50.0	54.0	55.0	71.0	67.0	63.0	63.0	57.6
N. Y.	50.5	52.0	42.6	47.7	47.3	46.8	53.7	59.1	70.5	63.6	60.3	63.7	54.4
N. C.	42.0	53.0	52.6	55.1	55.1	52.9	57.8	61.0	67.5	72.5	70.0	68.5	58.9
N. Dak.	27.0	28.1	28.2	28.8	28.8	29.8	33.6	34.9	51.7	52.9	52.7	39.8	35.9
Ohio	39.0	45.0	41.0	44.5	41.7	40.3	45.5	51.0	65.3	58.8	53.1	56.1	47.9
Okla.	41.0	49.0	38.0	46.0	43.0	43.0	49.0	48.0	75.0	62.0	59.0	58.0	50.7
Oreg.	44.0	53.0	49.0	50.0	51.0	49.0	52.0	52.0	65.0	63.0	62.0	58.0	53.9
Pa.	46.0	50.0	41.9	44.0	45.7	43.0	47.3	51.2	64.0	62.6	57.7	58.2	50.9
R. I.	66.0	68.0	57.0	61.0	61.0	64.0	73.0	75.0	88.0	84.0	77.0	79.0	71.0
S. C.	42.1	52.0	42.6	49.2	47.2	45.3	50.6	51.0	73.1	68.1	61.6	59.6	53.4
S. Dak.	23.4	30.4	28.8	31.2	30.1	31.1	37.4	40.1	51.1	52.0	49.3	41.3	36.8
Tenn.	45.0	50.0	45.0	52.0	51.0	51.0	56.0	58.0	72.0	69.0	63.7	62.6	56.4
Texas	50.0	52.0	46.0	53.0	58.0	56.4	50.8	50.6	69.2	63.3	57.9	57.6	55.5
Utah	44.0	49.0	45.0	45.0	44.0	41.0	42.0	47.0	65.0	59.0	52.0	53.0	48.9
Vt.	55.0	60.0	50.0	54.0	54.0	53.0	62.0	55.0	79.0	72.0	66.0	66.0	61.3
Va.	52.3	53.0	45.1	52.3	50.9	52.9	58.2	58.9	75.6	70.6	67.9	69.2	58.5
Wash.	42.5	51.0	43.0	47.0	47.0	43.0	50.0	43.5	65.6	60.7	53.0	53.3	50.5
W. Va.	51.9	56.5	48.0	51.0	51.0	50.0	54.0	60.0	77.0	68.5	66.0	68.0	58.2
Wis.	40.0	47.0	43.0	46.0	46.0	46.0	48.0	51.0	65.0	65.0	58.0	58.0	50.9
Wyo.	46.0	53.0	49.0	58.0	55.0	51.0	53.0	48.0	68.0	67.0	55.0	61.0	55.4
U. S.	44.2	50.0	42.8	46.9	46.9	45.5	50.4	51.9	68.7	63.9	59.3	59.3	52.5

1/ Average of all eggs sold by farmers including hatching eggs and eggs sold at retail. Revised.

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1/ Revised.

MINNESOTA AND WISCONSIN MANUFACTURING GRADE MILK
PRICE SPECIAL TABULATIONS

1075a

Special tabulations have been made of average prices paid per cwt. for manufacturing grade milk in Minnesota and Wisconsin, by months in 1970 and 1973, by kind of plant: those receiving only manufacturing grade (Grade B) milk and those receiving both manufacturing grade and milk eligible for fluid market (Grade A).

For 1970, the tabulations include all plants receiving any Grade B milk in both States. For 1973, the tabulations for Minnesota include all plants receiving any Grade B milk; for Wisconsin the tabulations include only those plants reporting receipts on a monthly basis, but those plants accounted for about 75 percent of the manufacturing grade milk produced in the State.

Prices at average test have been converted to a 3.5 percent basis using a butterfat differential per point (1/10 of one percent) that is calculated by multiplying the average price of Grade A (92 score) butter at Chicago by 0.120. This is the method specified in Federal milk orders.

Milk Sold to Plants, Manufacturing Grade (Price), Minnesota & Wisconsin
Average Price Received by Farmers per 100 pounds, (Adjusted to 3.5% B.F. basis)
by Kind of Plant, Monthly, 1970 and 1973

MINNESOTA				:	WISCONSIN				
1970		1973		:	1970		1973		
Grade B	:Dual-Intake	Grade B	:Dual-Intake	:	Grade B	:Dual-Intake	Grade B	:Dual-Intake	
Plants	: Plants	:Plants	: Plants	:	Plants	: Plants	: Plants	: Plants	
Dollars Per Hundredweight									
Jan.	4.49	4.47	5.34	5.35	:	4.70	4.62	5.59	5.57
Feb.	4.48	4.44	5.40	5.40	:	4.62	4.60	5.60	5.60
Mar.	4.43	4.39	5.45	5.44	:	4.61	4.57	5.72	5.72
Apr.	4.52	4.49	5.50	5.45	:	4.61	4.55	5.76	5.77
May	4.54	4.53	5.56	5.54	:	4.60	4.54	5.79	5.80
June	4.58	4.57	5.60	5.52	:	4.61	4.53	5.81	5.82
July	4.61	4.59	5.77	5.75	:	4.64	4.58	5.94	5.94
Aug.	4.60	4.59	6.50	6.47	:	4.66	4.55	6.46	6.48
Sept.	4.58	4.56	7.05	7.05	:	4.63	4.55	7.06	7.07
Oct.	4.59	4.56	7.40	7.40	:	4.70	4.68	7.53	7.51
Nov.	4.63	4.62	7.61	7.54	:	4.73	4.72	7.86	7.82
Dec.	4.68	4.69	7.79	7.78	:	4.77	4.75	8.10	8.01

1076a

PAMPHLET, "PRICES RECEIVED BY FARMERS FOR MANUFACTURING
GRADE MILK" (pp. 1076a-1082a)



prices received by farmers

FOR MANUFACTURING GRADE MILK
IN MINNESOTA AND WISCONSIN

1970 - 72

Pr 1-4 (7-73)

JULY 1973

CROP REPORTING BOARD

STATISTICAL REPORTING SERVICE • U.S. DEPARTMENT OF AGRICULTURE • WASHINGTON, D.C.

1077a
PRICES RECEIVED BY FARMERS
FOR MANUFACTURING GRADE MILK IN
MINNESOTA AND WISCONSIN, 1970-72

The Statistical Reporting Service of the U.S. Department of Agriculture publishes each month estimates of the average price received by farmers and the average milkfat test for milk of manufacturing grade for the preceding month for the two-State (Minnesota-Wisconsin) area. For example, the price for August 1973 will be reported on September 5, 1973.

These two States produce over half (54% in 1972) of the manufacturing grade milk marketed in the United States. The estimates relate only to manufacturing grade milk purchased from farmers and do not include Grade A milk diverted to manufacturing uses. The price concept used is that represented by dividing total dollars paid to producers, before hauling costs are deducted, by the number of hundredweight of manufacturing grade milk purchased from farmers. This is an estimate of the average price for all milk of manufacturing grade delivered in bulk tanks and in cans, f.o.b. plant or receiving station, before hauling costs are deducted. It includes bulk tank, quantity, or other premiums paid to producers, but excludes hauling subsidies.

Most of the basic and preliminary data needed for the preparation of the two-State average price and fat test of manufacturing grade milk are collected by the offices of the Federal-State Agricultural Statisticians in Minnesota and Wisconsin. These data come from regularly scheduled monthly reports submitted by plants receiving manufacturing grade milk.

After these data are summarized and analyzed by the Federal-State Statisticians, they are forwarded to Washington, D.C. for final review by the Crop Reporting Board and consolidation into the two-State average price and test.

The price and test estimates for a given month are derived from two factors: (1) the estimated average price and test for the base month, which is the month preceding that to which the estimate relates, and (2) an estimate of change from the base month to the month to which the estimate relates.

Estimated Price and Test for Base Month

The level for the base month, which is used as the benchmark, is based on reports from about 230 plants in Wisconsin and about 120 plants in Minnesota that purchase approximately 50 percent of all manufacturing grade milk sold by Wisconsin and Minnesota farmers. These reports give the total pounds of manufacturing grade milk received from producers, total pounds of milkfat in such milk and total dollars paid to producers.

The estimated monthly price and fat test for Minnesota and Wisconsin are weighted together by the total quantity of manufacturing grade milk purchased from farmers in each State. During the first half of any year these weights are based on data for the same month two years earlier. During the latter half of the year, weights are based on purchases for the corresponding month in the preceding year, since later data are available than during the first six months. The quantity weights, for weighting data for each State in computing the two-State average price, change each month and vary seasonally. In 1972, the annual average of the monthly volume weights for Wisconsin was 56 percent of the two-State total, and for Minnesota, 44 percent.

The 350 plants in the sample for the base month are well distributed geographically over both States, and represent all the major types of processing plants using manufacturing grade milk. At the end of the year, reports from all manufacturing grade milk plants in each State indicate close agreement with the monthly prices derived from the 350 plants.

Estimate of Change from Base Month

The estimate of change from the base month to the month to which the estimate relates is based primarily on reports from a sample of 110 plants distributed in the two States. These plant reports are also evaluated in terms of changes from the base month in wholesale prices of manufactured dairy products and historic price and fat test relationships. Estimated changes in price and fat test are applied to the State average for the base month to estimate price and fat test for each State for the month to which the estimates relate.

The sample for estimating change from the previous month includes 40 plants in Minnesota and 70 in Wisconsin. Plants in each area were classified according to type of products manufactured, and sample plants were drawn from each product class in each State. Plants that consolidate or go out of business are replaced by the same type plant of approximately the same size in the same general area.

In Minnesota, plants were classified originally into those making (1) butter and by-products and (2) other dairy products. Because of changing conditions, a new classification of Minnesota plants was made in 1963. Plants were reclassified into (1) butter and by-products; (2) cheese; and (3) varied products. Based on this method of classification, in 1972 the butter and by-products group accounted for 43 percent of all manufacturing grade milk in the State; cheese, 20 percent; and the varied-products group, 37 percent.

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In Wisconsin, the plants were divided originally into four major product groups: (1) cheese; (2) butter and by-products; (3) condenseries; and (4) varied products. In 1972, plants were reclassified into three major product groups. The proportion of manufacturing grade milk purchased in 1972 by each product group was: (1) cheese, 85 percent; (2) butter and by-products, 5 percent; and (3) condenseries and varied products, 10 percent.

In both Minnesota and Wisconsin, the varied-products group consists mostly of plants which make butter, cheese, or other products in such proportions that they cannot be clearly classified in any one specific group such as primarily butter-making plants, primarily cheese-making plants, or condenseries.

These percentages are used as weights for combining reported price and milkfat test data by groups for the monthly manufacturing grade average price and milkfat estimates in each State. The percentages are based on final plant enumerations for the previous year and are changed once each year, approximately 5 months after the close of the calendar year, when enumerated data become available.

Data are collected from the 110-plant sample using a questionnaire mailed near the close of each month. This inquiry is designed to obtain information for the base month and for the first half of the month relating to: (1) quantity of manufacturing grade milk purchased, (2) quantity of fat included, (3) dollars paid, if available, (4) average price at average test, and (5) related information such as quantities purchased in bulk and in cans, and the base price for 3.5 percent milk and point differentials for fat. Space also is provided on the inquiry for the plant manager's best estimate of the average fat test and milk price for the last half of the month to which the estimate relates.

Comparison of Current and Final Estimates

The table on page 6 gives a comparison of the current Minnesota-Wisconsin manufacturing grade milk price at average test with the final estimate combined for the two States from 1970 through 1972, together with the corresponding comparison for milkfat percentage. The entries in the column headed "Final Two-State Estimate" are weighted averages of the final monthly prices for Minnesota and Wisconsin combined, using complete monthly marketings for each State as weights.

For the 3 years 1970 through 1972, the latest years for which complete data are available, the differences between the current Minnesota-Wisconsin estimates of price per hundredweight and the final data average 1 cent; the difference in milkfat test average is negligible.

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Since the Minnesota-Wisconsin price for use in Federal milk orders is reported on a 3.5 percent milkfat basis, a table is included showing the same comparisons converted to a 3.5 percent basis. The price at average milkfat test is converted to a 3.5 percent basis using a milkfat differential per point (1/10 of one percent) that is calculated by multiplying the average price of Grade A (92-score) butter at Chicago by 0.120. This is the method specified in Federal milk orders.

Publication

The report for each month on price per hundredweight at the average milkfat test and on a 3.5 percent basis is issued about the 5th of the following month from the Wisconsin office of the Statistical Reporting Service, P. O. Box 5160, Madison, Wisconsin, 53705. This report is available on request. The price series is also published in the Dairy and Poultry Market News reports issued by several offices of the Dairy and Poultry Market News Service.

* * *

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Comparison of Minnesota-Wisconsin Manufacturing Grade Milk Price
and Milkfat Test with the Two-State Average of Final Estimates,
by Months, 1970-72

Year and month	Minnesota- Wisconsin Series		Final Two-State Estimate		Difference between Final Two-State and Minn.-Wis. Series	
	Price	Milkfat	Price	Milkfat	Price	Milkfat
	per cwt. 1/ Dollars	test Percent	per cwt. 1/ Dollars	test Percent	per cwt. 1/ Dollars	test Percent
<u>1970</u>						
January	4.81	3.67	4.84	3.67	+.03	0
February	4.74	3.63	4.73	3.63	-.01	0
March	4.67	3.61	4.66	3.61	-.01	0
April	4.67	3.58	4.68	3.59	+.01	+.01
May	4.65	3.58	4.67	3.58	+.02	0
June	4.65	3.55	4.64	3.53	-.01	-.02
July	4.65	3.56	4.62	3.51	-.03	-.05
August	4.64	3.54	4.65	3.52	+.01	-.02
September	4.79	3.65	4.82	3.66	+.03	+.01
October	4.97	3.74	5.01	3.75	+.04	+.01
November	5.05	3.71	5.07	3.77	+.02	0
December	5.03	3.74	5.06	3.74	+.03	0
Simple Average						
1970	4.7767	3.6350	4.7875	3.6300	+.0108	-.0050
<u>1971</u>						
January	4.93	3.67	4.98	3.68	+.05	+.01
February	4.95	3.64	4.97	3.64	+.02	0
March	4.91	3.62	4.91	3.62	0	0
April	4.92	3.61	4.89	3.61	-.03	0
May	4.84	3.59	4.86	3.58	+.02	-.01
June	4.82	3.58	4.83	3.56	+.01	-.02
July	4.82	3.56	4.82	3.55	0	-.01
August	4.84	3.59	4.85	3.56	+.01	-.03
September	4.94	3.64	4.93	3.64	-.01	0
October	5.02	3.74	5.03	3.74	+.01	0
November	5.07	3.78	5.10	3.78	+.03	0
December	5.13	3.74	5.14	3.74	+.01	0
Simple Average						
1971	4.9325	3.6467	4.9425	3.6417	+.0100	-.0050
<u>1972</u>						
January	5.12	3.69	5.13	3.70	+.01	+.01
February	5.10	3.66	5.13	3.66	+.02	0
March	5.15	3.64	5.14	3.65	-.01	+.01
April	5.07	3.63	5.07	3.62	0	-.01
May	5.03	3.61	5.04	3.60	+.01	-.01
June	5.01	3.58	4.99	3.56	-.01	-.02
July	5.04	3.54	5.05	3.55	+.01	+.01
August	5.14	3.58	5.14	3.59	0	+.01
September	5.23	3.66	5.26	3.68	+.02	+.02
October	5.41	3.78	5.45	3.80	+.04	+.02
November	5.59	3.82	5.58	3.81	-.01	-.01
December	5.63	3.76	5.65	3.78	+.02	+.01
Simple Average						
1972	5.2100	3.6625	5.2192	3.6667	+.0092	+.0042
36 Months	4.9731	3.6481	4.9831	3.6461	+.0100	-.0020

1/ Average price for milk of average milkfat test.

1082a

Comparison of Minnesota-Wisconsin Manufacturing Grade Milk Price with
Final Two-State Estimated Price, for Milk of 3.5 Percent Milkfat
Content, by Months, 1970-72 1/

Year and month	Minnesota-Wisconsin Series	Final Two-State Estimate	Difference between Final Two-State and Minn.-Wis. Series
Dollars per cwt.			
<u>1970</u>			
January	4.67	4.70	+.03
February	4.63	4.62	-.01
March	4.58	4.57	-.01
April	4.60	4.60	0
May	4.58	4.60	+.02
June	4.61	4.61	0
July	4.60	4.61	+.01
August	4.61	4.63	+.02
September	4.66	4.68	+.02
October	4.77	4.80	+.03
November	4.82	4.84	+.02
December	4.83	4.86	+.03
Simple Average			
1970	4.663	4.677	+.014
<u>1971</u>			
January	4.79	4.83	+.04
February	4.83	4.85	+.02
March	4.81	4.81	0
April	4.83	4.80	-.03
May	4.77	4.80	+.03
June	4.76	4.78	+.02
July	4.77	4.78	+.01
August	4.77	4.80	+.03
September	4.83	4.82	-.01
October	4.82	4.83	+.01
November	4.84	4.87	+.03
December	4.93	4.94	+.01
Simple Average			
1971	4.812	4.826	+.014
<u>1972</u>			
January	4.97	4.97	0
February	4.97	5.00	+.03
March	5.04	5.02	-.02
April	4.96	4.96	0
May	4.94	4.95	+.01
June	4.95	4.94	-.01
July	5.01	5.01	0
August	5.07	5.07	0
September	5.10	5.11	+.01
October	5.18	5.22	+.04
November	5.32	5.35	+.03
December	5.41	5.41	0
Simple Average			
1972	5.077	5.084	+.007
36 Months	4.851	4.862	+.011

1/ Prices have been converted from the average milkfat test to 3.5 percent using the milkfat differential specified in Federal orders (Chicago Grade A butter X 0.120).

**PARTIAL DECISION ON PROPOSED AMENDMENTS TO MARKETING
AGREEMENTS AND TO ORDERS (pp. 1083a-1109a)**
UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

7 CFR Parts 1001, 1002, 1004, 1015, 1033, 1036, 1040, 1049

Docket Nos. AO-14-A53, etc.

MILK IN THE BOSTON REGIONAL AND CERTAIN OTHER MARKETING AREAS

PARTIAL DECISION ON PROPOSED AMENDMENTS TO MARKETING AGREEMENTS
AND TO ORDERS

<u>7 CFR PART</u>	<u>MARKETING AREA</u>	<u>DOCKET NO.</u>
1001	Boston Regional	AO-14-A53
1002	New York-New Jersey	AO-71-A68
1004	Middle Atlantic	AO-160-A51
1015	Connecticut	AO-305-A31
1033	Ohio Valley	AO-166-A44
1036	Eastern Ohio-Western Pennsylvania	AO-179-A39
1040	Southern Michigan	AO-225-A28
1049	Indiana	AO-319-A22

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Washington, D. C., on February 20-28, 1974, pursuant to notice thereof issued on February 14, 1974 (39 F.R. 5642).

The material issues on the record of the hearing relate to:

1. The immediate need for making inoperative the butter-powder formula under each order during the next few months.

(39 F.R. 11567, 3-29-74)

2. Appropriate longer-term basis of pricing reserve milk under the eight orders.

3. Whether an emergency exists to warrant the omission of a recommended decision.

Sixteen proposals concerning the pricing of milk to which the butter-powder formula applies were submitted by interested parties for consideration at the hearing. Certain of the proposals called for either emergency suspension or immediate amendment action with respect to elimination of the butter-powder pricing formula. Other proposals involved adoption of new pricing formulas.

This partial decision deals with issues 1 and 3. Issue 2 is reserved for later decision.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The immediate need for making inoperative the butter-powder formula under each order during the next few months. The price for reserve milk disposed of in manufacturing uses other than butter and nonfat dry milk in the eight markets under consideration should not be based on the butter-powder formula price but rather on the average of prices paid for manufacturing grade milk in Minnesota and Wisconsin. Milk utilized in butter and nonfat dry milk production in this April-July 1974 period should be priced below such Minnesota-Wisconsin price by the amount, not to exceed 50 cents, that the butter-powder formula price is less than the Minnesota-Wisconsin price.

Since mid-1968 in the four northeastern markets and for several years prior thereto in the other four markets, reserve milk (Class II milk under the Boston Regional, Connecticut, Indiana, Middle Atlantic, and New York-New Jersey orders and Class III milk under the Eastern Ohio-Western Pennsylvania, Ohio Valley, and Southern Michigan orders) has been priced at the lower of either the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. Except for a few occasions, these two pricing formulas have been in close alignment. Annually, the butter-powder formula price and the Minnesota-Wisconsin price have been in relative balance. For instance, the butter-powder formula price averaged 5 cents per hundredweight below the Minnesota-Wisconsin price in 1968, 17 cents below in 1969, 10 cents below in 1970, 6 cents above in 1971, 2 cents below in 1972, and 7 cents below in 1973.

Since January 1, 1969, there have been three periods when the Minnesota-Wisconsin price and the butter-powder formula price varied by more than 25 cents per hundredweight. The first period was October-December 1969 and January-April 1970 when the Minnesota-Wisconsin price varied from 31 to 42 cents over the butter-powder formula price; the second period was in August and September 1973 when the butter-powder formula price exceeded the Minnesota-Wisconsin price 36 and 33 cents, respectively; and finally, since October 1973, the Minnesota-Wisconsin price has exceeded the butter-powder formula price by \$0.47, \$0.78, \$1.13, and \$1.18 for October, November, and December 1973, and January 1974, respectively.

This current unprecedented price disparity between these two formulas is a result of a \$2.32 increase since July 1973 in the prices paid for manufacturing grade milk as reflected in the Minnesota-Wisconsin pay price series compared to an increase of \$1.00 in the butter-powder formula price. Substantive differences between the two price formulas are likely to continue at least through the immediate peak production months.

Substantial quantities of milk used to produce manufactured dairy products are associated with the eight orders. The annual volume of reserve milk supplies priced under the eight orders in 1971, 1972, and 1973 ranged from 26 to 28 billion pounds. Such reserve supplies have represented about 45 percent of the total volume of Class II and Class III milk priced under all Federal milk orders. Moreover, nearly 40 percent of the reserve supplies in the eight markets is produced during the four-month period, April-July.

When considered collectively for all eight markets, the principal regular outlets for reserve milk is in the so-called soft products such as cream, cottage cheese, ice cream, and ice milk mixes and condensed products. To a lesser extent, reserve milk in the eight markets is also used in hard cheese production. During the months of seasonally high production, significant quantities of butter and nonfat dry milk are processed since producer receipts exceed the volume of milk that can be utilized in the/lowest class use outlets.

The butter-powder formula was adopted under these orders principally on the basis that butter and nonfat dry milk plants were used to process milk in excess of Class I and soft product uses. Recently hard cheese production has increased in this northeastern region and such outlet for milk now accounts for a greater proportion of the market for seasonal reserve milk supplies.

A compelling reason that immediate action be taken is to eliminate the competitive disparity that currently exists between processors of reserve milk in the eight markets under consideration and similar processors in other Federal orders and unregulated processors of manufactured dairy products. The competitive market for products manufactured from reserve milk is essentially national in scope. Hence, dairy products manufactured from Federal order products made from priced reserve milk compete with/unregulated manufacturing grade milk.

In recognition of this fact, it is essential that prices for reserve milk be maintained at comparable levels among Federal order markets with prevailing competitive pay prices for manufacturing grade milk at plants buying such milk.

Under existing circumstances, the current prices of reserve milk as established by the butter-powder price formula in the eight markets under consideration are substantially below the competitive market value of milk for similar uses in other Federal orders as the prices well as being paid by unregulated processors of manufacturing grade milk. Processors of reserve milk in the eight markets have

a substantially lower milk cost and thus higher gross margins are available to them than for their competitors. This disparity, if permitted to continue, will lead to dislocation of normal production and processing patterns and disruption of normal efficient marketing channels. To achieve competitive equality it is necessary to provide uniform pricing of reserve milk under the eight orders herein considered and the adjacent nearby orders to the West as well as align such prices with the competitive pay prices being paid for the majority of unregulated manufacturing grade milk in the United States. It is concluded, therefore, that this objective can best be achieved through the use of the Minnesota-Wisconsin price series.

It is quite evident that current reserve/milk prices in the eight markets herein considered are not providing producers a return for that portion of their milk utilized in manufactured dairy products reflecting its full use value. Producers should not be expected to continue to accept less for their milk not needed for Class I uses than its full use value.

The current lower reserve price levels as provided by the butter-powder price formula are significantly depressing the uniform price received by producers. The amount of this depressing effect on uniform prices varies among markets by the proportion of reserve milk for a particular market in a given month. However, the record evidence indicated that the relative impact on uniform prices of

using the butter-powder formula price rather than the Minnesota-Wisconsin price in determining reserve milk prices for the four-month period, October 1973-January 1974, in five markets (New York-New Jersey, Boston Regional, Connecticut, Middle Atlantic, and Eastern Ohio-Western Pennsylvania) was a weighted average reduction of nearly 32 cents per hundredweight.

Under this price depressing situation, dairy farmers are not encouraged to maintain milk production at levels necessary to meet current and anticipated market needs for milk and milk products. For the eight markets under consideration, total producer receipts in 1973 decreased 4.8 percent from 1972. Receipts in December were 4.6 percent below a year ago. The percentage of producer milk utilized in Class I in the eight markets increased from 60.3 percent in 1972 to 62.4 percent in 1973. Utilization of Class I milk in December 1973 was 64.4 percent.

Under these market conditions, an immediate increase in reserve milk prices will help encourage the production of U.S. adequate supplies of milk since total/milk production is less than domestic demand for milk and the markets represent a large proportion of total U. S. milk production.

Certain producer groups strongly urged that the current inequities in reserve milk pricing in the eight orders can best be achieved by immediately suspending the application of the butter-powder price formula. Under this proposal, all reserve milk would

be priced at the Minnesota-Wisconsin price. This proposed course of action is not adopted since it fails to consider that some reserve milk during this flush period will have no other available market outlet than in butter and powder production which, at present, is a lower-valued use of reserve milk.

As indicated previously, this decision provides for a special price for reserve milk used to produce butter and nonfat dry milk for the April-July 1974 period at ^{not more than} 50 cents per hundredweight less the price applicable to than/milk used in other manufactured dairy products. This special price is designed to recognize the lower use value of reserve milk utilized in butter and nonfat dry milk production. It should accommodate the orderly disposition of reserve milk that cannot be utilized in other manufactured products, which may occur during the seasonal flush.

The average prices paid at butter by-product plants in the U. S. in recent months has not dropped more than 42 cents under the Minnesota-Wisconsin price. An amount in excess of the 50-cent limit adopted, such as the \$1.18 which the butter-powder formula would provide, could result in a special butter-powder price sufficiently below the regular reserve milk price to encourage processors of ice cream and cottage cheese to displace producer milk with nonfat dry milk and butter made from milk priced at the lower special price. The net effect of this potential substitution, if practiced by handlers, would lower total returns to producers.

In order to facilitate and equitably apply this special butter-powder price, the accompanying amendatory orders provide an additional provision to the handler's pool obligation treating the 50 cent price differential as a credit.

To facilitate the marketing of excess milk supplies, milk and cream moved to a nonpool plant for processing into butter and nonfat dry milk should be eligible for the credit to

the extent that the amount processed into such products in the plant is sufficient to account for the amount of milk moved to such plant. In the event that there is an insufficient quantity of butter and nonfat dry milk made in a plant to account for the receipts from more than one Federal order source, the quantity

processed into butter and nonfat dry milk should be prorated among those Federal order sources for which a similar price credit is allowed.

Two of the orders, Middle Atlantic and Southern Michigan, contain a base-excess plan of payments to producers. Since the excess price under the orders is based on the lowest class price, the credits on milk used to produce butter and nonfat dry milk appropriately should be allocated against the value of excess milk to the extent that the volume of excess milk is sufficient to cover the volume of milk on which the credit is allowed.

3. Whether an emergency exists to warrant the omission of a recommended decision. The due and timely execution of the function of the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision and opportunity for exceptions thereto on Issue No. 1. The current marketing conditions in the aforesaid marketing areas are such that it is urgent that remedial action be taken as soon as possible. It is necessary to correct at the earliest opportunity the disparity in alignment of reserve milk prices under the eight orders with the prices order/ in the midwest as well as the prices being paid for manufacturing grade milk. Accordingly, the requests for a recommended decision are denied.

The notice of hearing stated that consideration would be given to economic and emergency marketing conditions relating to the proposed amendments. Certain parties at the hearing requested emergency action be taken. Interim emergency action is necessary pending a detailed review of new pricing formulas presented on the record.

It is therefore determined that good cause exists for the omission of the recommended decision and the opportunity for filing exceptions thereto.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

On the record of the hearing, separate motions were presented to the Administrative Law Judge that (1) the scope of the hearing be broadened to consider the proposed revision of all classification provisions of the orders, as well as to include the proposed revision of many additional Federal milk orders; and (2) the Department provide information during the hearing as to the identity, type of operation, and market outlet of products processed by plants handling manufacturing grade milk in the States of Minnesota and Wisconsin. The motions were denied.

In post-hearing briefs, it was requested that consideration be given to a reversal of the rulings.

The Administrative Law Judge's rulings have been reviewed in light of the arguments presented. The rulings, for the reasons stated by the Administrative Law Judge on the record, are hereby affirmed.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the aforesaid specified marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

**DETERMINATION OF PRODUCER APPROVAL
AND REPRESENTATIVE PERIOD**

(September 1973 for the New York-New Jersey order)

December 1973 /is hereby determined to be the repre-

sentative period for the purpose of ascertaining whether the
issuance of the orders, as amended and as hereby proposed
to be amended, regulating the handling of milk in the
aforesaid specified marketing areas,

is approved or favored by producers, as defined under the
each of
terms of /the orders (as amended and as hereby proposed to be
amended), who during such representative period were
engaged in the production of milk for sale within the aforesaid
marketing areas.

Signed at Washington, D.C., on:

March 27 1974

CLAYTON YEUTTER
Assistant Secretary

Order 1/ amending the order, regulating the handling of milk in the certain specified marketing areas.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations each of previously made in connection with the issuance of/the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. The following findings are hereby made with respect to each of the aforesaid orders.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid specified marketing areas.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

1/ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and each of conditions of the orders, as amended, and as hereby amended, as follows:

PART 1001 - MILK IN THE BOSTON REGIONAL MARKETING AREA

1. The introductory text of § 1001.61(b) preceding the table is revised as follows:

§ 1001.61 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price for the month computed pursuant to paragraph (b)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (b) shall be the Class II price.

* * * * *

2. In § 1001.64, a new paragraph (j) is added as follows:

§ 1001.64 Computation of value of fluid milk products at class prices.

* * * * *

(j) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class II milk and used to produce butter or nonfat dry milk by the lesser of 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1001.61(b)(1) through (3).

PART 1002 - MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The introductory text of § 1002.50a(c) preceding the table is revised as follows:

§ 1002.50a Class prices.

* * * * *

(c) Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price computed pursuant to paragraph (c)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (c)(1) through (3) of this section shall not be the Class II price.

* * * * *

2. In § 1002.70, the introductory text is revised and a new paragraph (f) is added as follows:

§ 1002.70 Net pool obligation of handlers.

Each handler's net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to be adjusted by any credit applicable pursuant to paragraphs (e) and (f) of this section to determine the handler's total net pool obligation.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of pool milk classified as Class II milk and used to produce butter or nonfat dry milk by the lesser of 50 cents per hundred-weight or the amount that the basic formula price exceeds the price computed pursuant to § 1002.50a(c)(1) through (3).

PART 1004 - MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The introductory text of § 1004.50(b) preceding the table is revised as follows:

§ 1004.50 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price computed pursuant to paragraph (b)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974, the price computed pursuant to (b) paragraph/(1) through (3) of this section shall not be the Class II price.

* * * * *

2. In § 1004.60, a new paragraph (f) is added as follows:

§ 1004.60 Pool obligation of each pool handler.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974 an amount computed by multiplying the quantity of producer milk classified as Class II milk used to produce butter or nonfat dry milk by the lesser of 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1004.50(b)(1) through (3).

3. In § 1004.61, paragraph (b)(1)(i) is revised as follows:

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

* * * * *

(b) * * *

(1) * * *

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price less 5 cents: Provided, That for each month from the effective date hereof through July 1974, there shall be deducted from the value of such excess milk an amount determined pursuant to § 1004.60(f) that is not in excess of an amount determined by multiplying the quantity of excess milk by/50 cents per hundredweight or the lesser or the amount that the basic formula price exceeds the price computed pursuant to § 1004.50 (b)(1) through (3);

* * * * *

PART 1015 - MILK IN THE CONNECTICUT MARKETING AREA

1. The introductory text of § 1015.61(b) preceding the table is revised as follows:

§ 1015.61 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price computed pursuant to paragraph (b)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974 the price computed pursuant to paragraph (b)(1) through (3) of this section shall not be the Class II price.

* * * * *

2. In § 1015.63, paragraph (g) is revised and a new paragraph (h) is added as follows:

§ 1015.63 Value of each handler's fluid milk products.

* * * * *

(g) Add together the values resulting from the computations described in paragraphs (a) through (e) of this section and subtract therefrom the values resulting from the computations described in paragraphs (f) and (h) of this section. The remainder shall be known as the value of fluid milk products.

(h) Deduct from the effective date hereof through July 1974 an amount computed by multiplying the quantity of producer milk classified as Class II milk used to produce butter or nonfat dry milk by the lesser of 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1015.61(b)(1) through (3).

PART 1033 - MILK IN THE OHIO VALLEY MARKETING AREA

1. The introductory text of § 1033.51(c) is revised as follows:

§ 1033.51 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (c)(1) through (3) of this section shall not be the Class III price:

* * * * *

2. In § 1033.60, a new paragraph (h) is added as follows:

§ 1033.60 Computation of the net pool obligation of each handler.

* * * * *

(h) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class III milk and used to produce butter or nonfat dry milk by ^{the lesser of} 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1033.51(c)(1) through (3).

PART 1036 - MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING
AREA

1. The introductory text of § 1036.50(c) is revised as follows:

§ 1036.50 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows: Provided, That from the effective date hereof through (c) July 1974, the price computed pursuant to paragraph/(1) through (3) of this section shall not be the Class III price:

* * * * *

2. In § 1036.60, a new paragraph (f) is added as follows:
§ 1036.60 Handler's value of milk for computing uniform price.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class III milk and used to produce butter or nonfat dry milk by the lesser of /50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1036.50(c)(1) through (3).

PART 1040 - MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The introductory text of § 1040.50(c) is revised as follows:

§ 1040.50 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price, but not to exceed an amount computed as follows: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph/(1) through (3) of this section shall not be the Class III price:

* * * * *

2. In § 1040.60, a new paragraph (h) is added as follows:
§ 1040.60 Handler's value of milk for computing uniform price.

* * * * *

(h) Subtract for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class III milk used to produce butter or nonfat dry milk by/50 cents per hundredweight or the lesser of the amount that the basic formula price exceeds the price computed pursuant to § 1040.50(c)(1) through (3).

3. In § 1040.61, paragraph (d) is revised as follows:
§ 1040.61 Computation of uniform prices for base milk and excess milk (including uniform price and adjusted uniform price).

* * * * *

which

(d) The excess milk price/shall be the Class III price pursuant to § 1040.50(c): Provided, That for each month from

the effective date hereof through July 1974, the excess milk price shall be determined as follows:

(1) Multiply the total pounds of excess milk for the month by the Class III price;

(2) Subtract the amount determined pursuant to § 1040.60(h) that is not in excess of an amount determined by multiplying the quantity of excess milk by the lesser of 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1040.50(c)(1) through (3); and

(3) Divide the resultant value by the total hundredweight of excess milk. The resultant hundredweight price shall be the uniform price of excess milk of 3.5 percent butterfat content.

PART 1049 - MILK IN THE INDIANA MARKETING AREA

1. The introductory text of § 1049.50(b) is revised as follows:

§ 1049.50 Class prices.

* * * * *

(b) Class II price. The Class II price shall be the basic formula price computed pursuant to § 1049.51, but not to exceed an amount computed as follows: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (b)(1) / (3) of this section shall not be the Class II price:

* * * * *

2. In § 1049.60, a new paragraph (f) is added as follows:
§ 1049.60 Handler's value of milk for computing uniform price.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class II used to produce the lesser of butter or nonfat dry milk by 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1049.50(b)(1) through (3).

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

1109a

MARKETING AGREEMENT REGULATING THE HANDLING OF MILK
IN CERTAIN SPECIFIED MARKETING AREAS

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1/ to , all inclusive, of the order regulating the handling of milk in the said marketing area (7 CFR Part 3/) which is annexed hereto; and

II. The following provisions:

§ 3/ Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of December 1973 hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 3/ Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

IN WITNESS WHEREOF, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

1/ First and last sections of order.

2/ Appropriate part number.

3/ Next consecutive section number.

 (Signature)

(Seal)

BY

 (Name)

 (Title)

 (Address)

Attest

Date

ORDER AMENDING ORDERS PUBLISHED APRIL 2, 1974

(pp. 1110a-1124a)

TITLE 7 - AGRICULTURE

CHAPTER X - AGRICULTURAL MARKETING SERVICE
(MARKETING AGREEMENTS AND ORDERS; MILK)

DEPARTMENT OF AGRICULTURE

MILK ORDER NOS. 1, 2, 4, 15, 33, 36, 40, 49

DOCKET NOS. AO-14-A53, etc.

PARTS 1001, 1002, 1004, 1015, 1033, 1036, 1040, 1049 - MILK IN THE
BOSTON REGIONAL AND CERTAIN OTHER MARKETING AREAS

ORDER AMENDING ORDERS

<u>7 CFR PART</u>	<u>MARKETING AREA</u>	<u>DOCKET NO.</u>
1001	Boston Regional	AO-14-A53
1002	New York-New Jersey	AO-71-A68
1004	Middle Atlantic	AO-160-A51
1015	Connecticut	AO-305-A31
1033	Ohio Valley	AO-166-A44
1036	Eastern Ohio-Western Pennsylvania	AO-179-A39
1040	Southern Michigan	AO-225-A28
1049	Indiana	AO-319-A22

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(39 F.R. 11980, 4-2-74)

Hearing Clerk

The following findings are hereby made with respect to each of the aforesaid orders:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid specified marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective

April 3, 1974. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued March 27, 1974. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective April 3, 1974, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the respective designated marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1001 - MILK IN THE BOSTON REGIONAL MARKETING AREA

1. The introductory text of § 1001.61(b) preceding the table is revised as follows:

§ 1001.61 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price for the month computed pursuant to paragraph (b)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (b) shall be the Class II price.

* * * * *

2. In § 1001.64, a new paragraph (j) is added as follows:

§ 1001.64 Computation of value of fluid milk products at class prices.

* * * * *

(j) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class II milk and used to produce butter or nonfat dry milk by the lesser of 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1001.61(b)(1) through (3).

PART 1002 - MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The introductory text of § 1002.50a(c) preceding the table is revised as follows:

§ 1002.50a Class prices.

* . * * *

(c) Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price computed pursuant to paragraph (c)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (c)(1) through (3) of this section shall not be the Class II price.

* * * * *

2. In § 1002.70, the introductory text is revised and a new paragraph (f) is added as follows:

§ 1002.70 Net pool obligation of handlers.

Each handler's net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to be adjusted by any credit applicable pursuant to paragraphs (e) and (f) of this section to determine the handler's total net pool obligation.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of pool milk classified as Class II milk and used to produce butter or nonfat dry milk by the lesser of 50 cents per hundred-weight or the amount that the basic formula price exceeds the price computed pursuant to § 1002.50a(c)(1) through (3).

PART 1004 - MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The introductory text of § 1004.50(b) preceding the table is revised as follows:

§ 1004.50 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price computed pursuant to paragraph (b)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974, the price computed pursuant to (b) paragraph/(1) through (3) of this section shall not be the Class II price.

* * * * *

2. In § 1004.60, a new paragraph (f) is added as follows:

§ 1004.60 Pool obligation of each pool handler.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974 an amount computed by multiplying the quantity of producer milk classified as Class II milk used to the lesser of produce butter or nonfat dry milk by 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1004.50(b)(1) through (3).

3. In § 1004.61, paragraph (b)(1)(i) is revised as follows:

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

* * * * *

(b) * * *

(1) * * *

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price less 5 cents: Provided, That for each month from the effective date hereof through July 197 , there shall be deducted from the value of such excess milk an amount determined pursuant to § 1004.60(f) that is not in excess of an amount determined by multiplying the quantity of excess milk by/50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1004.50 (b)(1) through (3);

* * * * *

PART 1015 - MILK IN THE CONNECTICUT MARKETING AREA

1. The introductory text of § 1015.61(b) preceding the table is revised as follows:

§ 1015.61 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the lesser of the basic formula price for the month or a butter-powder formula price computed pursuant to paragraph (b)(1) through (3) of this section: Provided, That from the effective date hereof through July 1974 the price computed pursuant to paragraph (b)(1) through (3) of this section shall not be the Class II price.

* * * * *

2. In § 1015.63, paragraph (g) is revised and a new paragraph (h) is added as follows:

§ 1015.63 Value of each handler's fluid milk products.

* * * * *

(g) Add together the values resulting from the computations described in paragraphs (a) through (e) of this section and subtract therefrom the values resulting from the computations described in paragraphs (f) and (h) of this section. The remainder shall be known as the value of fluid milk products.

(h) Deduct from the effective date hereof through July 1974 an amount computed by multiplying the quantity of producer milk classified as Class II milk used to produce butter or nonfat dry milk by the lesser of 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1015.61(b)(1) through (3).

PART 1033 - MILK IN THE OHIO VALLEY MARKETING AREA

1. The introductory text of § 1033.51(c) is revised as follows:

§ 1033.51 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph (c)(1) through (3) of this section shall not be the Class III price:

* * * * *

2. In § 1033.60, a new paragraph (h) is added as follows:

§ 1033.60 Computation of the net pool obligation of each handler.

* * * * *

(h) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class III milk and used to produce butter or nonfat dry milk by ^{the lesser of} 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1033.51(c)(1) through (3).

PART 1036 - MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING
AREA

1. The introductory text of § 1036.50(c) is revised as follows:

§ 1036.50 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows: Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph^(c)/(1) through (3) of this section shall not be the Class III price:

* * * * *

2. In § 1036.60, a new paragraph (f) is added as follows:
§ 1036.60 Handler's value of milk for computing uniform price.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class III milk and used to produce butter or nonfat dry milk by ^{the lesser of} 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1036.50(c)(1) through (3).

PART 1040 - MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The introductory text of § 1040.5 (c) is revised as follows:

§ 1040.50 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price, but not to exceed an amount computed as follows:

Provided, That from the effective date hereof through July 1974, the price computed pursuant to paragraph/(1) through (3) of this section shall not be the Class III price:

* * * * *

2. In § 1040.60, a new paragraph (h) is added as follows:

§ 1040.60 Handler's value of milk for computing uniform price.

* * * * *

(h) Subtract for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class III milk used to, produce butter or nonfat dry milk by/50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1040.50(c)(1) through (3).

3. In § 1040.61, paragraph (d) is revised as follows:

§ 1040.61 Computation of uniform prices for base milk and excess milk (including uniform price and adjusted uniform price).

* * * * *

which

(d) The excess milk price/shall be the Class III price pursuant to § 1040.50(c): Provided, That for each month from

the effective date hereof through July 1974, the excess milk price shall be determined as follows:

(1) Multiply the total pounds of excess milk for the month by the Class III price;

(2) Subtract the amount determined pursuant to § 1040.60(h) that is not in excess of an amount determined by multiplying the quantity of excess milk by/50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1040.50(c)(1) through (3); and

(3) Divide the resultant value by the total hundredweight of excess milk. The resultant hundredweight price shall be the uniform price of excess milk of 3.5 percent butterfat content.

PART 1049 - MILK IN THE INDIANA MARKETING AREA

1. The introductory text of § 1049.50(b) is revised as follows:

§ 1049.50 Class prices.

* * * * *

(b) Class II price. The Class II price shall be the basic formula price computed pursuant to § 1049.51, but not to exceed an amount computed as follows: Provided. That from the effective date hereof through July 1974, the price computed pursuant to paragraph (b)(1) / (3) of this section shall not be the Class II price:

* * * * *

2. In § 1049.60, a new paragraph (f) is added as follows:
§ 1049.60 Handler's value of milk for computing uniform price.

* * * * *

(f) Deduct for each of the months from the effective date hereof through July 1974, an amount computed by multiplying the quantity of producer milk classified as Class II used to produce the lesser of butter or nonfat dry milk by 50 cents per hundredweight or the amount that the basic formula price exceeds the price computed pursuant to § 1049.50(b)(1) through (3).

Final Order Boston Regional, et al.

1124a

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: April 3, 1974

Signed at Washington, D.C., on: March 28, 1974

CLAYTON YENTTER
Assistant Secretary

1125a

Signed (7/25/74.)

FINAL ORDER OF THE SECRETARY OF AGRICULTURE

(pp. 1125a-1142a)

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

7 CFR PARTS 1001, 1002, 1004, 1015, 1033, 1036, 1040, 1049

Docket No. AO-14-A53, etc.

MILK IN THE BOSTON REGIONAL AND CERTAIN OTHER MARKETING AREAS

DECISION ON PROPOSED AMENDMENTS TO MARKETING
AGREEMENTS AND TO ORDERS

<u>7 CFR PART</u>	<u>MARKETING AREA</u>	<u>DOCKET NO.</u>
1001	Boston Regional	AO-14-A53
1002	New York-New Jersey	AO-71-A68
1004	Middle Atlantic	AO-160-A51
1015	Connecticut	AO-305-A31
1033	Ohio Valley	AO-166-A44
1036	Eastern Ohio-Western Pennsylvania	AO-179-A39
1040	Southern Michigan	AO-225-A28
1049	Indiana	AO-319-A22

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Washington, D. C., on February 20-28, 1974, pursuant to notice thereof issued on February 12, 1974 (39 F.R. 5642).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Associate Administrator, on June 21, 1974, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issues on the record relate to:

1. The immediate need for making inoperative the butter-powder formula under each order during the next few months.
2. Appropriate longer-term basis of pricing reserve milk under the eight orders.
3. Whether an emergency exists to warrant the omission of a recommended decision.

Issues 1 and 3 were dealt with in an earlier decision (39 F.R. 11567). This decision deals with the remaining issue, No. 2.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. Appropriate longer-term basis of pricing reserve milk under the eight orders. The reserve milk price (Class II milk in the Boston Regional, Connecticut, New York-New Jersey and Middle Atlantic orders and Class III milk in Eastern Ohio-Western Pennsylvania, Indiana, Ohio Valley, and Southern Michigan orders) should be based on the Minnesota-Wisconsin price for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as announced by the Department for the month.

The use of such price will maintain prices of reserve milk supplies at the highest level consistent with the orderly disposition of such milk and assure dairy farmers the full use value for that portion of their milk shipments not needed for Class I. Moreover, the use of the Minnesota-Wisconsin price as the reserve milk price in the eight markets, herein considered, will result in order prices for reserve milk comparable to prices being paid by processors of manufacturing grade milk in general. Finally, it will maintain alignment of reserve milk prices among the eight orders with other orders, most of which, effective August 1, 1974, will employ such pricing for reserve milk supplies.

Since mid-1968 in the four northeastern markets and for several years prior thereto in the other four markets, reserve milk has been priced at the lower of either the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. The Minnesota-Wisconsin price was the effective price in the eight orders for 32 of the 60 months during the 5-year period from 1969 through 1973.

Annually, the Minnesota-Wisconsin price and the butter-powder formula price have been in relatively close alignment. For instance, the Minnesota-Wisconsin price averaged 6 cents per hundredweight above the butter-powder formula price in 1968, 17 cents above in 1969, 10 cents above in 1970, 6 cents below in 1971, 2 cents above in 1972 and 7 cents above in 1973.

In the latter part of 1973 an unprecedented price gap developed between the level of the Minnesota-Wisconsin price and the butter-powder formula price. Until then the widest differences between the two prices were during October 1969 through April 1970 when the Minnesota-Wisconsin price varied from 31 to 42 cents over the butter-powder formula price. The Minnesota-Wisconsin price exceeded the butter-powder formula price by \$0.47, \$0.78, \$1.13, \$1.18, \$1.19 and \$0.73 for October, November and December 1973 and January, February and March 1974, respectively.^{1/} In April 1974, due largely to a sharp decline in cheese prices with a continuing strong price structure for nonfat dry milk the relationship between the two price series reversed itself. For this month, the Minnesota-Wisconsin price was \$0.29 per hundredweight below the butter-powder formula price.

^{1/} This decision makes use of certain prices of butter, nonfat dry milk, and manufacturing grade milk for months beyond the dates for which such prices were available on the hearing record. For this purpose official notice is taken of the official price announcements of the market administrator, New York-New Jersey Federal order market for March through May 1974.

The wide divergence between the Minnesota-Wisconsin price and the butter-powder formula price that developed beginning in October 1973 prompted the various proposals relating to the pricing of reserve milk in the eight markets that were considered at the hearing.

Emergency interim action was taken on the hearing record to provide that during the period April 3 through July 1974 all reserve milk, except that used to produce butter and nonfat dry milk, be priced at the Minnesota-Wisconsin price. For milk used in butter and nonfat dry milk the price would be reduced by the amount not to exceed 50 cents per hundredweight, that the Minnesota-Wisconsin price exceeds the butter-powder formula price.

Accordingly, the issue remaining is the appropriate pricing of reserve milk after July 1974. The reserve milk pricing provisions in effect prior to April 3 will become operative August 1, 1974, except under the Indiana order, unless further amendment action is effected. The Indiana order has been amended effective August 1, 1974, on the basis of a separate proceeding involving several orders. Such amendments use of the Minnesota-Wisconsin price as the reserve milk price.

The testimony adduced at the hearing centered primarily on the question of whether or not the butter-powder price formula in each of the eight orders should be deleted as an alternative basis in determining reserve milk prices. Both producers and handlers took diverse positions regarding this matter.

A national farm organization that has producer members in each of the eight markets, a large cooperative associated with the Middle Atlantic market, a large regional cooperative that has producer members in the Indiana and Southern Michigan markets, and a handler in the Boston Regional market, all proposed that the price for reserve milk be the Minnesota-Wisconsin price. In support of such proposal, they contended that the then effective reserve milk pricing formula (the lesser of the Minnesota-Wisconsin price or the butter-powder formula price) did not assure producers a reasonable return for reserve milk when market prices considered collectively for butter and nonfat dry milk are low relative to the Minnesota-Wisconsin price. They further contended that the butter-powder formula price did not reflect the value of other reserve milk products or the general economic factors affecting such products. Hence, they urged that the butter-powder formula price be eliminated to avoid the possibility of such product price depressing the price of all reserve milk and its accompanying adverse effect on uniform prices paid to producers. They pointed out, also, that the use of the Minnesota-Wisconsin price would maintain price alignment with other order and unregulated reserve milk prices.

Another regional cooperative, principally associated with the New York-New Jersey market, proposed that reserve milk prices be based on the Minnesota-Wisconsin price in each month except during the flush production months of April, May and June of each year. During such three months, reserve milk prices would be based on the lower of the Minnesota-Wisconsin price or the butter-powder formula price. This proponent contended that the retention of the alternative butter-powder price determinant was necessary to assure the availability of adequate butter-powder processing facilities for excess supplies in these markets during the flush production months.

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Several of the principal cooperatives associated with the Eastern Ohio-Western Pennsylvania, Indiana and Ohio Valley markets proposed the adoption of the Minnesota-Wisconsin price as the price for all reserve milk except for that used to produce butter and nonfat dry milk. Under their proposal, reserve milk used in butter and nonfat dry milk would be priced each month at the butter-powder formula price. The basis of their proposal was that reserve milk should be priced at its actual use value. They held that the level of reserve milk prices had encouraged some milk to be associated with the orders under which they operate that is not always available for Class I use. They pointed out that this milk is sold to cheese plants at a price substantially higher than its value under the order prices when the butter-powder formula price is the effective price. The need for pricing milk utilized in butter and powder at the butter-powder formula price, they contended, is necessary to accommodate the orderly disposition of the seasonal and weekend excess milk at plants processing butter and nonfat dry milk.

Certain other cooperatives associated primarily with the New York-New Jersey, Boston Regional and/or Connecticut markets proposed that milk utilized in other than butter and nonfat dry milk production be priced on the simple average of the Minnesota-Wisconsin price and butter-powder formula price. Under their proposal, reserve milk utilized in butter and skim milk powder would be priced at the lower of the butter-powder value or Minnesota-Wisconsin price. Other cooperatives associated with the Southern Michigan market supported a similar reserve milk pricing formula but held that the average of the Minnesota-Wisconsin price and the butter-powder formula price should not result in a price lower than the butter-powder formula price. With respect to pricing milk used in butter and powder production, the Southern Michigan group proposed use of the butter-powder formula price.

In support of these latter reserve milk pricing proposals, proponents stated, generally, that there are significant differences in the competitive position of, and demand for, products made from reserve milk. Handlers prefer to use quality milk on a regular basis for certain manufactured products such as cottage cheese and ice cream. Proponents contended that the price of reserve milk used in such products should reflect, to the extent possible, the costs associated with attracting an adequate supply of such milk. Conversely, they pointed out that other products that are made from residual supplies of reserve milk compete in a national market with such products made from manufacturing grade milk and thus the value of reserve milk used in such products is lower. It was their contention that the proposal to base reserve milk prices on the average of the Minnesota-Wisconsin and butter-powder formula prices reflects the overall value of the mix of products made from reserve milk. The price applicable to milk used in butter and powder production, they contended, should basically reflect the net value that can be realized by producer organizations that are handling reserve milk supplies in connection with performing the Class I balancing function. These proponents further stated that the retention of the butter-powder formula is essential to the maintenance of needed manufacturing outlets for processing excess milk from cooperatives performing the Class I balancing function.

The national organization representing dairy cooperatives proposed the adoption of separate pricing formulas for reserve milk used in cheese and butter-powder production based on the yield factors and "make allowances" employed by the Department under the dairy price support program. Adoption of this limited proposal, it was contended, would (1) provide needed additional compensation to handlers -- principally cooperatives -- to offset the costs they incur in performing balancing services to the market and (2) return to farmers a price reflecting the full use value of milk made into cheese, butter and powder.

Certain individual handlers associated with the Boston Regional and New York-New Jersey markets proposed that the present "make allowance" of 48 cents contained in the butter-powder price formula be increased to 72 cents per hundred-weight. They contended that the present 48 cents "make allowance" should be adjusted to reflect the increase in costs of receiving and processing reserve milk that has occurred since adoption of the product price formula in July 1968.

A regional association of ice cream manufacturers, a processing cooperative associated with the Middle Atlantic market, and a group of Ohio handlers testified in support of retaining the present reserve milk pricing formula. They were particularly opposed to the removal of the butter-powder price formula from the eight orders under consideration. Its elimination, they contended, would (1) result in reserve milk prices at levels which would deter the disposition of such milk through normal market channels; (2) have an adverse effect on consumer prices and acceptability of certain manufactured dairy products; (3) result in competitive inequities between regulated and unregulated handlers; and (4) base reserve milk prices solely on the Minnesota-Wisconsin price series which they held is not an appropriate price determinant for reserve milk. Moreover, they strongly urged that no action be taken as a result of these proceedings and recommended that another hearing be called to consider the propriety of using the Minnesota-Wisconsin series as a basis in determining class prices under the orders.

Substantial quantities of reserve milk used to produce manufactured dairy products are associated with the eight orders. During the past three years (1971, 1972 and 1973) the annual volume of reserve milk supplies priced under the eight orders ranged from 11 to 13 billion pounds. Such reserve supplies represented about 45 percent of the total volume of reserve milk priced under all Federal milk orders. Moreover, nearly 40 percent of the reserve supplies in the eight markets is produced during the 4-month period, April-July.

A substantial part of the reserve milk associated with the eight orders is used in the manufacture of the so-called "soft products" -- principally cottage cheese, frozen desserts, and condensed products. This "soft products" use of reserve milk constitutes a more regular outlet on a year-round basis than the storable manufactured products such as hard cheeses, butter and nonfat dry milk. The use of reserve milk in the manufacture of the storable products is more seasonal in nature and thus is somewhat greater in the flush production months than in other months of the year.

In 1973, about 65 percent of the reserve milk supplies in five of the eight markets -- Boston, Eastern Ohio-Western Pennsylvania, Indiana, Ohio Valley and Southern Michigan -- was utilized in the production of "soft products". During the 12-month period ending May 31, 1973, about 80 percent of the volume of reserve milk associated with the New York-New Jersey order was utilized in manufactured products other than hard cheese and butter-powder. Comparable data for the Middle Atlantic and Connecticut orders were not available on the record.

About 38 percent of the reserve milk supplies in the eight markets, herein considered, is priced under the New York-New Jersey order. The monthly volume of reserve milk in this market during the 12-month period ending May 31, 1973, ranged from a low of 300 million pounds in November to a high of 535 million pounds in June. Notwithstanding this relatively wide variation, the volume of reserve milk utilized in butter and powder in June was only one-third of total reserve milk usage.

In pricing reserve milk in each of the eight markets to carry out the objectives of the statute authorizing milk orders, prices should be established at the highest level possible compatible with the orderly disposition of such milk. The reserve milk price, in conjunction with the price for other uses of milk under the orders, should result in uniform prices high enough to attract the needed milk supplies. The effect of a reserve milk price less than the highest practicable level is to shift to consumers of fluid milk a greater burden in providing the price incentive to attract the necessary milk supply. In effect, consumers of fluid milk would subsidize consumers of manufactured products. On the other hand, if reserve milk is priced too high in relation to competitive free market prices handlers may not accept milk in excess of actual fluid needs and thus chaotic market conditions may prevail as homeless milk competes for market outlets.

An important factor that must be considered in pricing reserve milk is that the competitive market for products manufactured from reserve milk is with products made from unregulated manufacturing grade milk. It is essential, therefore, that Federal order prices for reserve milk be maintained at levels comparable with prevailing competitive pay prices for manufacturing grade milk at plants buying such milk.

The Minnesota-Wisconsin price is a representative pay price reflecting the prices paid to producers in the two-State area wherein about 13 billion pounds or approximately half the total manufacturing grade milk in the United States is produced. It reflects prices paid at the farm level under competitive conditions for manufacturing grade milk used in the major manufactured dairy products. The price is highly responsive to supply and demand conditions for such products that are sold within a marketing system that is national in scope.

The Minnesota-Wisconsin price series is published monthly by the Statistical Reporting Service of the Department and represents an estimate of the prices paid in these two States for manufacturing grade milk based on reports from 350 plants. In 1972, this two-State average price reflected a weight of about 56 percent for Wisconsin prices and 44 percent for Minnesota prices. These weights represent the proportions of the total volume of manufacturing grade milk purchased from farmers in the respective States.

The two-State price average reflects prices paid for milk used in different manufactured products at plants buying such milk. In 1972, butter and by-product plants accounted for 43 percent of all manufacturing grade milk in Minnesota. Cheese plants accounted for 20 percent and plants manufacturing varied products accounted for the remaining 37 percent.

In Wisconsin, plants used the following proportions of manufacturing grade milk in 1972 according to type of plant: cheese, 85 percent; butter and by-products, 5 percent; and condenseries and varied products, 10 percent.

Each year, the Statistical Reporting Service publishes the results of a comparison of the Minnesota-Wisconsin price with the average price reported paid at all manufacturing plants in the two States (nearly 750 plants). Official notice of the 1973 release of these data was taken at the hearing. This release showed that for the three years 1970 through 1972 monthly reported Minnesota-Wisconsin prices averaged 1.1 cents per hundredweight below what was actually paid.

Close surveillance of the Minnesota-Wisconsin price series is maintained by the Statistical Reporting Service and the Agricultural Marketing Service to assure continued reliability of the series. Investigations bearing on criticisms voiced about the reliability of the series have been undertaken. For example, a number of years ago it was alleged that the reported Minnesota-Wisconsin price overstated prices actually paid because of butterfat testing practices at dairy plants. A study directed at answering this criticism was undertaken by the University of Minnesota, the University of Wisconsin, and the Department of Agriculture of the two States. A copy of this study, released in 1968, was entered into the hearing record. It concluded that the average "overstatement" of milk prices, because of understating butterfat test was 4.1 cents per hundredweight, but this was virtually offset by hauling subsidies that resulted in an understatement of 1.4 cents per hundredweight in reported prices, and cash dividends that resulted in an understatement of 2.1 cents per hundredweight in reported prices for the two States combined.

More recently it has been alleged that the Minnesota-Wisconsin price overstates the value of manufacturing milk because dual-intake plants (receiving both manufacturing grade and milk eligible for fluid markets) are included in the sample and Grade A proceeds are used to subsidize manufacturing grade milk operations. To provide the facts of the situation, special tabulations for 1970 and 1973 were made by the Statistical Reporting Service. Such tabulations show that Grade B plants paid slightly higher average prices for manufacturing grade milk than did dual-intake plants. Grade B plants in Minnesota paid an average of 2 cents more per hundredweight than dual-intake plants both in 1970 and 1973. In Wisconsin, Grade B plants paid an average of 5 cents more in 1970 and 1 cent more in 1973 than was paid for manufacturing grade milk at dual-intake plants. (The 1970 tabulations were entered into the hearing record, but both the 1970 and 1973 tabulations are shown in Supplement No. 1 to the April 14, 1974, issue of Agricultural Prices, official notice of which is taken.)

The allegations made on the record challenging the validity of the Minnesota-Wisconsin price series as a proper determinant of manufacturing milk values are unfounded. Moreover, because the Minnesota-Wisconsin price is a free market pay price resulting from competitive bidding among unregulated processors for milk for various manufacturing uses, it is the best measure available of changes in the value of milk for manufacturing.

The Minnesota-Wisconsin price is the sole basis (effective August 1, 1974) of pricing milk in the lowest price class under 48 of the 53 Federal milk orders in effect outside the northeastern markets. The 39-market uniform classification and pricing decisions (39 F.R. 8202 and 8452) adopted the Minnesota-Wisconsin price as the reserve milk price. These decisions provided a continuation of the Minnesota-Wisconsin price as the reserve milk price in 24 markets and expanded its use to 15 additional markets. The five markets, outside the Northeast, which use the Minnesota-Wisconsin price as an alternative price for reserve milk rather than the sole basis of pricing such milk are in the western part of the country; namely, Black Hills, Western Colorado, Inland Empire, Puget Sound and Oregon-Washington. Therefore, use of the Minnesota-Wisconsin price for reserve milk pricing in the northeastern markets would result in uniform pricing of virtually all reserve milk priced under Federal milk orders except for the Pacific Northwest States, since only a very small quantity of reserve milk is priced under the Black Hills and Western Colorado orders.

Use of the Minnesota-Wisconsin price will assure closer alignment of reserve milk prices between three-class use markets and two-class use markets. The Eastern Ohio-Western Pennsylvania, Ohio Valley and Southern Michigan orders provide an intermediate classification (Class II) for cream products, cottage cheese, yogurt, and milk disposed of to commercial food processors. A similar intermediate class of use is provided under the Indiana order as well as under the other Federal orders amended on the basis of the "39 market classification decision" (effective August 1974). The price for such intermediate class in these markets is the Minnesota-Wisconsin price plus 10 cents, except in the Southern Michigan market where it is 15 cents over the Class III price.

Under the two-class Boston Regional, Connecticut, New York-New Jersey, and Middle Atlantic orders, such product uses of milk are included in Class II. Consequently, adoption of the Minnesota-Wisconsin price as the lowest use class price in the northeastern markets will maintain greater parity of prices for milk used in cream products, cottage cheese, yogurt, or disposed of to a food processing establishment by handlers throughout the Federal order system.

With the trend toward intermarket sales of various milk products over increasingly wider areas, significant competitive inequities would result among handlers in the several markets, unless the prices for similar uses of milk are kept in close alignment.

When butter and nonfat dry milk values are extremely low relative to cheese as during the last three months of 1973, the orders appropriately should encourage the processing of reserve milk into the more remunerative manufacturing uses to assure that producers realize the returns available from such higher valued uses.

With bulk tank truck handling of milk and an improved highway system, it is feasible to channel milk supplies to those plants processing milk into the more remunerative products. The order pricing provisions should not interfere with such practice, since reserve milk supplies of about 12 billion pounds annually priced under the northeastern orders represent a very significant proportion of the nation's supply of milk.

The basic problem giving rise to the hearing was that the butter-powder price formula was establishing reserve milk prices in the eight markets substantially below the competitive market value of milk for similar uses in other Federal orders as well as prices being paid by unregulated processors of manufacturing grade milk. In this situation, processors of reserve milk in the eight markets had a substantially lower minimum cost of milk and thus higher gross margins were available to them than to certain of their competitors based outside the eight-market area. If such a situation were to continue for any substantial period of time, it could lead to a dislocation of normal production and processing patterns and disruption of normal efficient marketing channels as sales outlets for the various manufactured products are shifted among such competing suppliers because of differences in milk procurement costs.

If reserve milk prices were continued to be based on a product price formula minus a specified "processing margin" such as the present butter-powder price formula, the pool plant processing manufactured products at all times would have assurance of a predetermined minimum operating margin, regardless of current values being paid for ungraded milk on a competitive basis by unregulated processors. Under normal market conditions, such order plants are not faced with competition in procurement since the operation of the pool's equalization fund enables them to pay the uniform price rather than actual use value to producers. Nonregulated processors do not have this advantage. Rather they must pay whatever price is necessary to obtain milk supplies. It is essential, therefore, that to maintain competitive equality between regulated and unregulated processors of manufactured products, reserve milk prices under the orders be closely aligned with the farm prices paid by unregulated plants in the manufacturing industry.

Certain proponents urged that the reserve milk price reflect the supply balancing costs of cooperatives which result from irregular volumes of reserve milk processed at cooperative-owned manufacturing plants. In performing the balancing function of tailoring milk supplies to other handlers, a cooperative incurs various costs. These costs vary according to each handler's procurement practices receiving such service. A handler that regularly accepts the total production of a given number of producers incurs the cost of balancing. Conversely, in the case of a handler who orders from a cooperative exact quantities based on needs, the cooperative incurs the cost of balancing. Balancing costs, to a large degree, are related to the quantity of milk produced and the demand for Class I use. A substantial portion of the costs incurred in balancing is in serving the Class I market. Therefore, such costs appropriately should be reflected in a service charge to the handler receiving the balancing supply service and should not be reflected in a lower price to producers. The record indicates that cooperatives follow the practice of assessing a handling charge.

A reserve milk price based on the average of the Minnesota-Wisconsin and butter-powder formula prices would establish excessive weight in the formula on the value of milk used to produce butter and powder. This is because, as stated hereinbefore, the Minnesota-Wisconsin price reflects in part prices paid for milk used in the production of butter and nonfat dry milk.

As previously noted, various proprietary handlers and operating cooperatives in the Northeast proposed that the basis of pricing reserve milk should continue the "whichever is lower" concept. The continuance of this concept was necessary, they strongly urged, in order to accommodate the complete disposition of distress reserve milk supplies at times when the competitive pay prices for manufacturing grade milk are too high in relation to the market values of butter and powder.

Certain parties in their briefs contended that the dairy product price relationships which existed at the time of the hearing had changed substantially subsequent to the hearing. Those parties requested that in the event the Department should consider changing the pricing provisions for reserve milk on a long-term basis as a result of this hearing, that the hearing should be reopened to permit taking of additional evidence.

Official notice has been taken of the official price announcements of the Market Administrator of the New York-New Jersey Order No. 2 for the months of March through May 1974 by which these changing dairy product price relationships are demonstrated, and there would accordingly be no need to reopen the hearing to receive such evidence. Even though the dairy product price relationships have changed, the circumstances which prompted the hearing could arise again if the order were not appropriately amended. The problem of interorder price relationships and continuing alignment of Federal order reserve milk prices with unregulated manufacturing milk values can be assured only through the type of action herein taken.

Conceivably, market conditions could change for brief periods to an extent which warrant a lower price for certain uses of reserve milk. In such circumstances, the amendment hearing procedure offers an appropriate means of accommodating such exceptional market situations.

The reserve milk prices in the Boston Regional, Connecticut, Middle Atlantic and New York-New Jersey orders are adjusted seasonally. Generally, the amount of such adjustments range from a minus 12 cents in May to a plus 12 cents per hundred-weight in the fall months; and, on an annual basis, the minus adjustments are offset by plus adjustments. The purpose of such adjustments is to encourage handlers to make milk more readily available for fluid use in the short production months and to facilitate the orderly disposition of excess reserve milk supplies in the flush production months.

Such seasonal adjustments provide some interregional price disparity; however, the record does not indicate that the seasonal adjustments have led to any interregional problems in marketing of the reserve milk supply.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

On the record of the hearing, separate motions were presented to the Administrative Law Judge that (1) the scope of the hearing be broadened to consider the proposed revision of all classification provisions of the orders, as well as to include the proposed revision of many additional Federal milk orders; and (2) the Department provide information during the hearing as to the identity, type of operation, and market outlet of products processed by plants handling manufacturing grade milk in the States of Minnesota and Wisconsin. The motions were denied.

In post-hearing briefs, it was requested that consideration be given to a reversal of the rulings.

The Administrative Law Judge's rulings have been reviewed in light of the arguments presented. The rulings, for the reasons stated by the Administrative Law Judge on the record, are hereby affirmed.

Requests were also contained in post-hearing briefs that the hearing be reopened for the taking of additional evidence. For the reasons heretofore stated, such requests are denied.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders, except Indiana, and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders, except Indiana.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

In exceptions to the recommended decision, certain requests were made to either take no amendatory action or reopen the hearing for the purpose of taking evidence on market developments subsequent to the close of the hearing. Other exceptions purported to discredit the Minnesota-Wisconsin price as a viable price under the orders and requested that further and more extensive hearings be held on the appropriateness of the Minnesota-Wisconsin manufacturing grade milk price as a price mover under the orders.

Such requests would result, effective August 1, 1974, for an indefinite period, in the orders reverting to the respective prehearing provisions that price milk for manufacturing use on the basis of the lower of the Minnesota-Wisconsin price or the butter-powder formula price. In this circumstance, the requests are inconsistent in that they would continue the use of the Minnesota-Wisconsin price when it is lower than the butter-powder formula price. Such requests, therefore, are essentially directed to the level of price.

In support of requests to reopen the hearing, the exceptors point out that the relationship of the Minnesota-Wisconsin price and the butter-powder formula price has reversed since March 1974 and, thus, the Minnesota-Wisconsin price has been the effective price mover under the orders. Such exceptors, however, did not contend that the Minnesota-Wisconsin price was inappropriate for use under the orders in those months that it is lower than the butter-powder formula price.

Under these circumstances, the request would merely result in retaining the butter-powder formula price "snubber" which, for the reasons hereinbefore stated, should no longer be retained as a long-term pricing provision under the orders. Accordingly, the requests to reopen the hearing are denied.

With respect to the request to hold further and more extensive hearings on the appropriateness of the Minnesota-Wisconsin price as a price for milk used for manufacturing purposes, exceptor does not question the use of such price as the sole price mover for Class I milk under the orders. Moreover, since all Federal milk marketing orders employ the Minnesota-Wisconsin price as a Class I price mover, and it has essentially uniform application in pricing Class II and III milk, any further review of the validity of such price for use under orders would of necessity involve all milk orders. Such request, therefore, is much broader than the limited scope of this hearing on the appropriate pricing of milk for manufacturing use in eight of the 61 Federal order markets. Exceptor does not provide any indication that a better alternative price mover than the Minnesota-Wisconsin price is available. Therefore, it cannot appropriately be concluded from exceptions that this proceeding should be further continued or made more extensive. Moreover, as previously stated, we must have reasonable price coordination between the Federal milk orders, which will be enhanced by the action concluded herein to be needed. Accordingly, such request is hereby denied.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the aforesaid specified marketing areas, except Indiana, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

1137a

DETERMINATION OF PRODUCER APPROVAL
AND REPRESENTATIVE PERIOD

March 1974 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid specified marketing areas, except Indiana, is approved or favored by producers, as defined under the terms of each of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D. C., on July 25, 1974.

/s/ Richard L. Feltner
Assistant Secretary

ORDER^{1/} AMENDING THE ORDERS, REGULATING THE HANDLING OF MILK
IN CERTAIN SPECIFIED MARKETING AREAS

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders, except Indiana, and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders, except Indiana:

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

^{1/} This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by the Associate Administrator on June 21, 1974, and published in the FEDERAL REGISTER on June 26, 1974 (39 F.R. 23063) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1001--MILK IN THE BOSTON REGIONAL MARKETING AREA

1. In § 1001.61 paragraph (b) is revised as follows:

§ 1001.61 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
January	+\$0.03	July	+.03
February	+.02	August	+.10
March	-.05	September	+.06
April	-.09	October	+.06
May	-.12	November	+.06
June	-.11	December	+.06

§ 1001.64 [Amended]

2. In § 1001.64, paragraph (j) is revoked.

PART 1002--MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. In § 1002.50a paragraph (c) is revised as follows:

§ 1002.50a Class prices.

* * * * *

(c) Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
January	+\$0.03	July	+.03
February	+.02	August	+.10
March	-.05	September	+.06
April	-.09	October	+.06
May	-.12	November	+.06
June	-.11	December	+.06

2. In § 1002.70, paragraph (f) is revoked and the introductory text of the section is revised as follows:

§ 1002.70 Net pool obligation of handlers.

Each handler's net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to be adjusted by any credit applicable pursuant to paragraph (e) of this section to determine the handler's total net pool obligation.

* * * * *

(f) [Revoked]

* * * * *

PART 1004--MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.50 paragraph (b) is revised as follows:

§ 1004.50 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
January	+\$0.05	July	+.05
February	+.04	August	+.12
March	-.03	September	+.08
April	-.07	October	+.08
May	-.10	November	+.08
June	-.09	December	+.08

§ 1004.60 [Amended]

2. In § 1004.60 paragraph (f) is revoked.

3. In § 1004.61 paragraph (b)(1)(i) is revised as follows:

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

* * * * *

(b) * * *

(1) * * *

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price less 5 cents;

PART 1015--MILK IN THE CONNECTICUT MARKETING AREA

1. In § 1015.61 paragraph (b) is revised as follows:

§ 1015.61 Class prices.

* * * * *

(b) Class II price. Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
January	+\$0.088	July	+.088
February	+.078	August	+.158
March	+.008	September	+.118
April	-.032	October	+.118
May	-.062	November	+.118
June	-.052	December	+.118

2. In § 1015.63 paragraph (h) is revoked and paragraph (g) is revised as follows:

§ 1015.63 Value of each handler's fluid milk products.

* * * * *

(g) Add together the values resulting from the computations described in paragraphs (a) through (e) of this section and subtract therefrom the values resulting from the computations described in paragraph (f) of this section. The remainder shall be known as the value of fluid milk products.

(h) [Revoked]

* * * * *

PART 1033--MILK IN THE OHIO VALLEY MARKETING AREA

1. In § 1033.51 paragraph (c) is revised as follows:

§ 1033.51 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1033.60 [Amended]

2. In § 1033.60 paragraph (h) is revoked.

PART 1036--MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. In § 1036.50 paragraph (c) is revised as follows:

§ 1036.50 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1036.60 [Amended]

2. In § 1036.60 paragraph (f) is revoked.

PART 1040--MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. In § 1040.50 paragraph (c) is revised as follows:

§ 1040.50 Class prices.

* * * * *

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1040.60 [Amended]

2. In § 1040.60 paragraph (h) is revoked.
3. In § 1040.61 paragraph (d) is revised as follows:

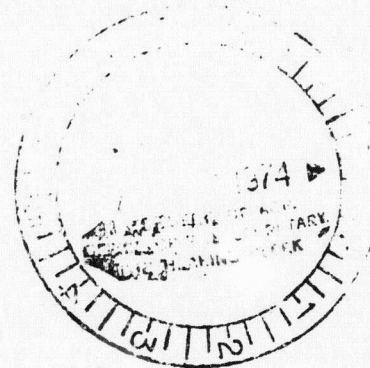
§ 1040.61 Computation of uniform prices for base milk and excess milk (including uniform price and adjusted uniform price).

* * * * *

(d) The excess milk price which shall be the Class III price pursuant to § 1040.50 (c).

#

DOCUMENTS FROM THE ADMINISTRATIVE APPEAL



1143a

PETITION OF CUBA CHEESE CO.
(pp. 1143a-1151a)

.....
CUBA CHEESE COMPANY
Cuba, New York

vs.

EARL BUTZ,
Secretary of Agriculture
United States Department
of Agriculture
.....

: HMA Docket No. M 2-46
:
:
:
:
:
:
:

PETITION UNDER SECTION 15A
OF THE AGRICULTURAL MARKETING AGREEMENTS ACT
(May 12, 1933, c.25 Title I, §8c, as added
August 24, 1935, c.641, §5.49 Stat. 753 as amended)

The above-named Petitioner respectfully represents that:

1. Its correct name, its address and principal place of business, the statement that it is a corporation, its state of incorporation and the names, addresses and positions held by its officers and directors are attached hereto as an Exhibit.

2. Complaint is made of the amendment to Federal Order No. 2 made under Docket No. AO-71-A68 in so far as the amended provisions of Order No. 2 effect prices paid producers for the reasons set forth below, relating to removal of the "butter-powder" snubber as a price determinant for manufacturing milk.

3. On February 20 through February 28, 1974, pursuant to notice issued on February 12, 1974, a hearing was held in Washington involving all of the following Orders:

Boston Regional

New York-New Jersey

Middle Atlantic

Connecticut

Ohio Valley

Eastern Ohio-Western Pennsylvania

Western Michigan

Indiana.

At the hearing in Washington, objections were made to the calling of such hearing on an emergency basis; to the lack of adequate notice in order to prepare for the hearing; to the failure to consider the effect on consumer prices of any change in formula pricing which would have the effect of raising consumer prices; to the fact that any revision of the pricing

formula would discriminate unfairly between regulated and unregulated handlers and between proprietary and cooperative handlers; to the denial of Motions to require the Department to produce all of the data supporting the use of the Minnesota-Wisconsin Series and as a basic price formula or to permit a test of the validity of the formula, which information is only in the Department's possession, to the failure of the Department to respond to the request that the material be made available at the hearing; to the establishment of any pricing formula using the Minnesota-Wisconsin Series without all of the material relating to the Series and its appropriateness as a price mover for milk having been made part of the record; to any action being taken in the absence of any evidence showing that there was not at the present time an adequate supply of milk; and to the failure to open the hearing to consider Class I prices and the effect of any change in the formula upon the blend price, particularly in view of the high Class I prices presently being obtained under the Northeast Orders. Subsequent to the hearing, an Order was issued which removed the butter-powder snubber from the Order as a price determinant for Class II milk, except for butter and powder only, and then only to a maximum of fifty cents below the Minnesota-Wisconsin price, for the period April 1, 1974 through July 31, 1974.

Petitioner is a handler under Federal Order No. 2 and is required to pay producers the prices set in the Orders of the Secretary. Petitioner operates a manufacturing plant and therefore is directly affected by any change in the formula. Petitioner is aggrieved by the Order in that the effect of removal of the butter-powder snubber so suddenly and with only four days' notice

leaves Petitioner totally unable to pass on the increased costs resulting from the Order, resulting in substantial losses; that the products manufactured by Petitioner are price elastic, so that sales will decrease markedly as a result of price increases, thereby causing irreparable harm; and that Petitioner is placed at a serious economic disadvantage with respect to manufacturing plants in Minnesota and Wisconsin.

4. The Order as amended is complained of and challenged on the following legal grounds:

(a) It was issued as part of a regional milk marketing Order (although each Order was given a separate docket number) in violation of 7 U.S.C.A. §608c(11) (A);

(b) It was issued as part of a national project to align prices in all milk marketing orders without reference to local conditions in violation of 7 U.S.C.A. §608c(11) (A);

(c) It was issued without prescribing such different terms from other Orders as the record indicates were necessary to give recognition to the differences in production and marketing of milk in the New York-New Jersey areas in violation of 7 U.S.C.A. §608c(11) (C);

(d) The Order was issued in violation of 7 U.S.C.A. §§602(1) and 602(2) (b) in that there was no evidence to relate the Order to parity prices;

(e) The Order was issued in violation of 7 U.S.C.A. §602(2) in that the Order did not provide for "gradual correction of the current [price] level" as required by that Statute;

(f) Adequate notice of the hearing and adequate opportunity to be heard was not given in violation of 7 U.S.C.A. §608c(3);

(g) The Order fails to make adjustment for differences in the grade and quality of milk purchased between the Minnesota-Wisconsin and Northeast Areas as required by 7 U.S.C.A. §608c(5) (A) (2);

(h) The Order is invalid because of the refusal of the Department of Agriculture to produce records relating to the validity of the Minnesota-Wisconsin Series (the basic price formula adopted) as required by the Administrative Procedure Act, 5 U.S.C.A. §552(a) (3);

(i) The Department of Agriculture failed to give the advance notice of the amendment thirty days before its effective date, as provided in 5 U.S.C.A. §553(d), giving only four days to accomodate to fundamental and radical changes in milk prices and marketing patterns;

(j) The Proponents failed to sustain their burden of proof imposed upon them by 5 U.S.C.A. §556(d), and the Order issued on the basis of the record was therefore illegal;

(k) The Order was issued in violation of 5 U.S.C.A. §557 in that no tentative or recommended decision was issued and no reasonable opportunity was given for the parties to submit proposed findings and conclusions, and exceptions to any recommended decision: 5 U.S.C.A. §557(d);

(l) The Order is arbitrary, capricious, an abuse of discretion, and not in accordance with law;

(m) The Order is contrary to the constitutional rights of the Petitioner;

(n) The Order exceeds the Secretary's statutory jurisdiction and authority;

1148a

(o) The Order did not observe the procedures required by law;

(p) The Order was unsupported by substantial evidence;

(q) The Order was unwarranted by the facts.

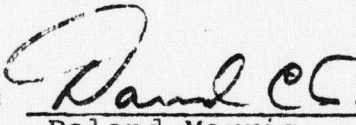
5. Petitioner avers that this Petition is filed in good faith belief in the illegality of the Order, and not for purposes of delay.

WHEREFORE, Petitioner respectfully prays that the Secretary rescind the Order promulgated at Docket AO-71-A68 on March 27, 1974 and grant such other relief as he may deem just and equitable under the circumstances.

Respectfully submitted,

DUANE, MORRIS & HECKSCHER

BY:


Roland Morris
David C. Toomey

Attorneys for Petitioner

EST. 1870



1149a
MANUFACTURERS OF FAMED NEW YORK STATE CHEDDAR CHEESE

CUBA CHEESE
& TRADING COMPANY, INC.

NON-HYGROSCOPIC WHEY SOLIDS



PHONE (716) 968-1552

Cuba, New York 14727

March 29, 1974

APR 1 REC'D

David Toomey, Esq.
Duane, Morris & Heckscher
100 South Broad Street
Philadelphia, Pa. 19110

Dear Mr. Toomey:

In addition to the information sent to you under
seperate cover, the following is a list of our
directors:

Edwin S. Moses
Clyde Brown
Frank Williams
Nico van Zwanenberg
Francis Moses

Very truly yours,

CUBA CHEESE & TRADING CO., INC.

E. S. Moses
President

ESM/gk

1150a

EXACT CORPORATION NAME Cuba Cheese & Trad. Co. Inc.

MAILING ADDRESS P.O. Box 47

ADDRESS OF PRINCIPAL PLACE OF BUSINESS 47 Genesee St.,

CITY & STATE OF INCORPORATION Cuba, New York , 14727

DATE OF INCORPORATION October 1941

PRESIDENT NAME Edwin S. Moses

ADDRESS 116 South Street - Cuba, New York 14727

VICE PRESIDENT NAME Nico van Zwanenberg

ADDRESS 102 South Street - Cuba, N.Y. 14727

SECRETARY NAME Francis E. Moses

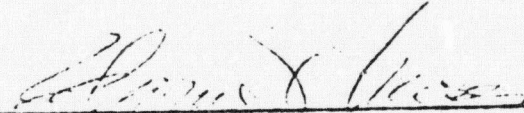
ADDRESS R.D.#1 Cuba, N.Y. 14727

TREASURER NAME Nico van Zwanenberg

ADDRESS 102 South St., - Cuba, New York 14727

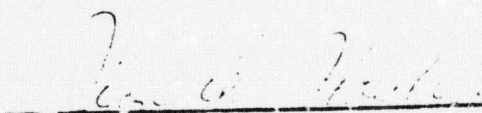
STATE OF NEW YORK :COUNTY OF Allegany :

Edwin S. Moses, being duly sworn according
to the law, deposes and says that he is President
of Cuba Cheese & Trading Co. Inc., that he is authorized to
take this affidavit on behalf of the Corporation, and that
the fact set forth in the attached petition are true
and correct to the best of his knowledge, information and
belief.


Edwin S. Moses

Sworn and Subscribed

Before me this 2nd day of March, 1974.

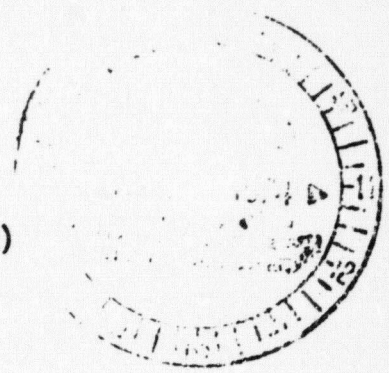

Notary Public

My commission expires:

MRS. JEAN A. HASKINS #849
Notary Public, State of New York
Qualified in Allegany County
My Commission Expires March 20, 1975.

1152a

APPLICATION FOR INTERIM RELIEF
(pp. 1152a-1155a)



.....
CUBA CHEESE COMPANY
Cuba, New York

vs.

EARL BUTZ,
Secretary of Agriculture
United States Department
of Agriculture
.....

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: *AMA Docket No 112-16*
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:

APPLICATION FOR INTERIM RELIEF

APPLICATION FOR INTERIM RELIEF

Petitioner files this Application pursuant to 7 C.F.R. §900.70, requesting interim relief suspending the application of amendments to Federal Order No. 2 and other Orders issued March 27, 1974 under Docket No. AO-71-A68, et al. Petitioner asserts the following:

1. Petitioner has filed a Petition under Section 8c(15)(A) of the Act.

2. The facts and arguments set forth in Petitioner's Petition are the facts relied upon for relief and are incorporated herein.

3. Irreparable injury will result by reason of the amendments made to Federal Order No. 2 and other Orders under Docket No. AO-71-A68, et al, in that:

(a) Petitioner cannot absorb the increase in the price of its raw product cost brought about by the amendment;

(b) The amendments were announced so close to the effective date that Petitioner will be unable to pass on his increased raw product cost to his consumers, thereby suffering substantial irreparable loss;

(c) The products manufactured by Petitioner are price elastic, and even if he is able ultimately to pass along some costs, customer resistance to increased costs will substantially decrease Petitioner's sales, to his irreparable harm;

(d) In the event that the amendments appealed from in the Petition are ultimately set aside, Petitioner will be unable to recover the increased raw product costs which he paid while the appeal process was being pursued;

(e) Petitioner will be severely prejudiced in its competitive position vis-a-vis manufacturing plants in Minnesota and Wisconsin because of higher productions costs under Order No. 2 or other eastern Orders brought about by the administrative assessment, F.O.B. farm pricing, and the low yield of milk products from milk in the Northeast as compared to the Minnesota-Wisconsin area.

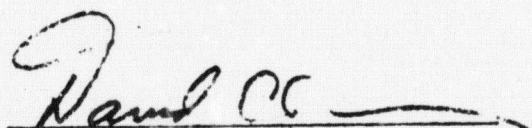
WHEREFORE, Petitioner respectfully requests that the Secretary immediately suspend the amendments to Order No. 2 and all other Orders announced on March 27, 1974, pending final adjudication.

Petitioner further requests that, in view of the immediate effective date of the Order, the Secretary respond to this Application within five days of the date of filing.

Respectfully submitted,

DUANE, MORRIS & HECKSCHER

By


Roland Morris
David C. Toomey

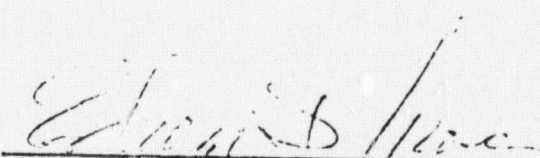
Attorneys for Petitioner

1155a

STATE OF NEW YORK:

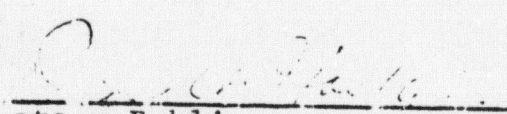
COUNTY OF Allegany

Edwin S. Moses, being duly sworn according
to the law, deposes and says that he is President
of Cuba Cheese & Trading Co. Inc., that he is authorized to
take this affidavit on behalf of the Corporation, and that
the fact set forth in the attached application, are true
and correct to the best of his knowledge, information and
belief.


Edwin S. Moses

Sworn and Subscribed

Before me this 27th day of March, 1974.


Notary Public

My Commission expires:

MRS. JEAN A. HASKINS #842
Notary Public, State of New York
Qualified in Allegany County
My Commission Expires March 30, 1975

1156a

ANSWER TO PETITION

UNITED STATES DEPARTMENT OF AGRICULTURE (pp. 1156a-1157a)

BEFORE THE SECRETARY OF AGRICULTURE

In re:

Cuba Cheese Co.,

Petitioner

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)

AMA Docket No. M 2-46



ANSWER

The respondent answers the petition filed on April 8, 1974, as follows:

Numbered Paragraph One. Respondent does not controvert the allegations contained in numbered paragraph one.

Numbered Paragraph Two. Respondent controverts the allegations contained in numbered paragraph two.

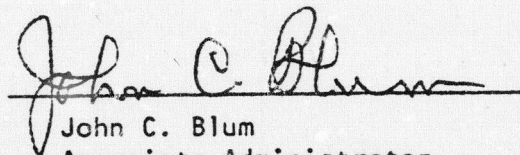
Numbered Paragraph Three. Respondent controverts the allegations contained in numbered paragraph three, except that it admits that a hearing was held on the dates indicated in Washington, D. C., involving the listed milk orders; that certain handlers did object to the calling of the hearing for a variety of reasons; and that subsequent to the hearing an order was issued which removed the butter-powder snubber from the order as a price determinant for Class II milk during the period April 3, 1974, through July 31, 1974, except for butter and powder which would continue to be priced on a basis of the butter-powder formula up to a maximum of fifty cents below the Minnesota - Wisconsin price. Respondent further admits that petitioner is a handler under Federal order No. 2, but does not receive producer milk in such fashion that it is required to pay order prices and does not have any monetary obligations under Order No. 2 to its producer-settlement fund.

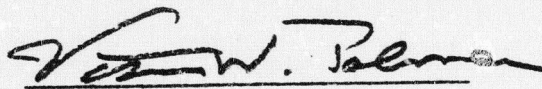
Numbered Paragraph Four. Respondent controverts the allegations contained in numbered paragraph four.

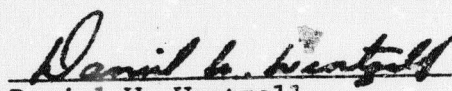
Numbered Paragraph Five. Respondent controverts the allegations contained in numbered paragraph five.

Relief Prayed. The remainder of the petition consists of the relief prayed requiring neither admission nor controversions.

WHEREFORE, having fulling answered, respondent prays that the relief requested in the petition be denied and that the petition be dismissed on its merits.


John C. Blum
Associate Administrator


Victor W. Palmer


Daniel W. Wentzell
Attorneys for Respondent

1158a

ANSWER TO APPLICATION FOR INTERIM RELIEF

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

Cuba Cheese, Co.,

Petitioner

)

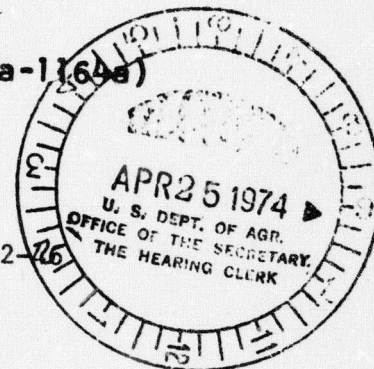
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AMA Docket No. M 2-26



Answer to Application for Interim Relief

Respondent hereby answers the application for interim relief filed by petitioner on April 8, 1974.

The Nature of the Application

This application was filed on even date with a petition filed under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. § 608c(15)(A)). The application is ancillary to its petition which pertains to the amendment of Federal Milk Order No. 2 as a result of the Secretary's decision arising out of hearings held February 20-28, 1974, under Docket No. AO-71-A68, on the amendment of Order No. 2 and seven other milk orders regulating milk handling in Northeast marketing areas. Petitioner asserts that it will incur additional obligations to the producer-settlement fund of Order No. 2 as a result of the amendment of the orders' class II pricing provision. Petitioner complains that such additional obligations are being imposed in controvention of the due process clause of the Constitution of the United States, are in violation of the Agricultural Marketing Agreement Act requirements, are in violation of the Administrative Procedure Act, are arbitrary, capricious, and an abuse of discretion, exceed the Secretary's statutory

jurisdiction and authority, are unsupported by substantial evidence, and are contrary to petitioner's constitutional rights.

Petitioner seeks the suspension of the amendment to Order No. 2 and of all other Orders announced on March 27, 1974, pending final adjudication.

Respondent opposes the granting of the interim relief requested for the reasons stated, infra.

Petitioner Cannot Make The Requisite Showing
For the Granting of Interim Relief

It is fundamental that an applicant for interim relief must demonstrate the same factors that control when a preliminary injunction is sought in the Court. See In re J. W. Joyce, et al., 24 A.D. 754, 755; Atlantic and Gulfwest Coast v. United States, 90 F. Supp. 554, 555 (S.D.M.Y. 1950); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (DC Cir. 1958); Eastern Air Lines v. CAB, 261 F.2d 830 (2nd Cir. 1958). Those factors were enumerated and applied in In re Olson Dairy, Inc., 30 A.D. 1773 (1971):

"The application for interim relief should be denied. Petitioner fails to show an irreparable injury absent interim relief at any rate any payments required by the order provisions can be refunded to petitioner from the producer-settlement fund if petitioner should succeed on its merits. Moreover, petitioner has not demonstrated that there is a reasonable certainty or even a likely prospect that it will succeed on the merits after hearing, etc. The petition states only that imposition of the order provisions complained is ' . . . a violation of the 'due process' and equal protection clauses of the Constitution of the United States'.

Finally, in any event, the application should not be granted because of adverse effects on the producer and public interest. See In re Sherman Fitzgerald d/b/a Sher-Von Dairy, 29 A.D. 1119 (1970) and the cases cited therein."

The holding of Virginia Petroleum Jobbers Association v. Federal Power Commission, supra, was stated in Eastern Airlines, Inc. v. Civil Aeronautics Board, supra, as follows:

" . . . stay of an order of an administrative agency may be granted when the following conditions are met: (a) where the petitioner is likely to prevail on the merits of its appeals; (b) where the petitioner has shown that without a stay it will suffer irreparable injury; (c) where there is no substantial harm to other interested persons; and (d) where the public interest will not be harmed."

In the instant case the application filed by the petitioner would suspend the operation of the amended class II pricing provisions of all eight orders resulting from the Secretary's decision of March 27, 1974. This would result in all dairy farmers in each of the regulated markets receiving less than the full value of their milk utilized for manufacturing purposes which the Secretary in his decision has determined they are entitled to receive. Certainly in such circumstances it cannot be said that there would not be substantial harm to other interested persons if the relief requested were granted. Furthermore, attached is a copy of an affidavit by Herbert Forest, Director of the Dairy Division, which was filed in litigation pending before the United States District Court for the District of Columbia, in which he attested to the fact that there is \$600,000 currently in the reserve fund which would be sufficient to cover such damages as this petitioner and the other petitioners who have filed similar actions in this matter seek.

Respondent further points out that the petitioner has not shown that it is likely to prevail on the merits of this case in which the public interest would be harmed by an order vitiating eight of the Department's major milk orders.

In addition to the other reasons why interim relief should not be granted, this petitioner does not receive producer milk directly from dairy farmers and has no obligation to or from the producer-settlement fund. Accordingly, it fits within the rule stated in United Milk Producers of New Jersey v. Benson, 225 F2d 527 (D. C. Cir. 1955), in which the plaintiffs claimed that a USDA order damaged their competitive position and enhanced that of out-of-state milk distributors. The Court, after citing numerous Supreme Court cases, held:

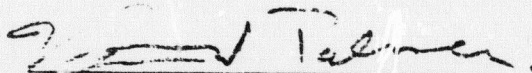
"The decisions referred to make clear (1) that injury from lawful competition is damnum absque injuria and affords no standing to the party damaged to seek judicial relief therefrom, absent statutory aid to standing; (2) that competition otherwise lawful is not unlawful because made more injurious by governmental action assumed to be invalid, with possible exceptions not here relevant, so long as no legal right of the party injuriously affected is invaded for . . .; and (3) no legal right of one in a situation comparable in all material respects to plaintiff's is invaded by lawful competition that is facilitated by such governmental action, and, thereby made more economically injurious than otherwise would be the case."

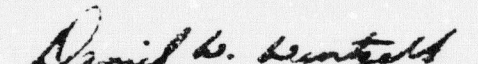
See also Benson v. Schofield, 236 F2d 719 (D.C. Cir. 1956). Having suffered no legal injury by reason of the orders complained of, petitioner cannot have suffered the irreparable injury which they must demonstrate to obtain interim relief.

A case demonstrating the harm caused to dairy farmers when an order increasing their pay prices is stayed is Green Valley Creamery v. United States, 105 F2d 754 (1st Cir. 1939), which dissolved orders of supersedeas previously granted in H. P. Hood & Son v. United States, 97 F2d, 677. Illustrative of cases in which interim relief has been denied where the reserve fund is sufficient to cover anticipated damages, is Inter-State Milk Producers Cooperative, Inc. v. St. Clair, 314 F. Supp. 108 (District Maryland, 1970), and United States of America v. Abbotts Dairies, 315 F. Supp. 571 (Eastern District Pennsylvania, 1970). See also Willow Farms Dairy, Inc. v. Benson, 181 F. Supp. 802 (District Maryland, 1960); United States v. Ideal Farms, Inc., 162 F. Supp. 28 (D.C. N.J. 1958), affirmed, 262 F2d 334 (3rd Cir. 1958).

It is submitted that controlling law requires the application's denial.

WHEREFORE, respondent prays that petitioner's applications for interim relief be denied.


Victor W. Palmer


Daniel W. Wentzell
Attorneys for Respondent


John C. Blum
Associate Administrator

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CROWLEY'S FOODS, INC., et al.,

Plaintiffs

v.

EARL BUTZ, SECRETARY OF
THE DEPARTMENT OF AGRICULTURE
OF THE UNITED STATES,

Defendant

CIVIL ACTION NO. 74-516

A F F I D A V I T

City of Washington :
: ss
District of Columbia:

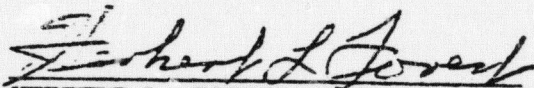
Herbert L. Forest, being duly sworn, deposes and says:

1. I am the Director, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture. Included among the duties of Director is the responsibility for supervision of the Market Administrators in their administration of Federal milk marketing orders. The statements in this affidavit are based upon my personal knowledge or upon official records of the United States Department of Agriculture in the Agricultural Marketing Service.

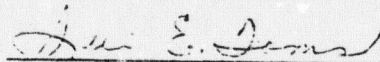
2. I was graduated from the University of Massachusetts and did graduate work in economics at Harvard University. In 1935 I joined the staff of the Dairy Section of the United States Department of Agriculture and continued with the Department until I was appointed Director, Dairy Division, Agricultural Marketing Service, in May 1954. Since coming to the Dairy Section in 1935, I have been in intimate contact with the development and administration of Federal milk orders and

since 1946 have had increasing responsibility for their formulation and the supervision of their administration in all marketing areas under regulation. There are presently 61 such milk marketing orders.

3. I have assisted in the preparation of and have reviewed the Government's Answers and Proposed Findings of Fact that are being filed with the Court simultaneously with this affidavit. The actual data, the economic estimates, and the various allegations therein contained are correct to the best of my information, knowledge and belief. In particular, I wish to stress that the producer-settlement reserve funds of both Orders 2 and 4 appear, in my opinion, to be more than adequate to cover the disputed amounts that are likely to ensue from the Secretary's Partial Decision and Order, which is the subject of these proceedings. It may be in the case of Order 2 that ~~the~~ reserve fund would not be adequate to cover such amounts fully ~~upon~~ demand, but in the event the amount is in excess of \$600,000, the ~~excess~~ would be likely paid in full the following month.


HERBERT L. FOREST, Director
Dairy Division
U. S. Department of Agriculture

Subscribed and sworn to before me, a Notary
Public in and for the District of Columbia,
this 8th day of April, 1974.


Notary Public

My Commission expires on January 31, 1977.

1165a

ORDER DENYING INTERIM RELIEF

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) AMA Docket No. M 2-46
Cuba Cheese Company)
Petitioner) Denial of
Interim Relief

In this proceeding under § 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937, as reenacted and amended (7 U.S.C. 601 et seq.), petitioner has filed, along with its petition, an application for interim relief.

The petitioner, together with others, also instituted a proceeding for injunctive relief in the United States District Court for the District of Columbia. Such relief was denied by the Court on April 18, 1974. Lehigh Valley Cooperative Farmers v. Butz, No. 74-515; Crowley's Foods, Inc., et al., v. Butz, No. 74-516.

The application for interim relief is denied for the reasons set forth by the Court in the foregoing cases.

Done at Washington, D. C.

May 1, 1974

A handwritten signature in cursive script, reading "Donald A. Campbell".

Donald A. Campbell
Judicial Officer
Office of the Secretary

1166a

ORDER OF CONSOLIDATION

(PP-1166a-1167a)

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE



In Re:

Cuba Cheese Company,
Deltown Foods Inc.,
Saratoga Dairy, Inc.,
Queensboro Farm Products, Inc.,
Queens Farms, Inc.,
Cowley's Foods Inc.,
Pollio Dairy Products Corp.,
Friendship Dairies, Inc.,
Elmhurst Milk & Cream Co., Inc.,

Petitioners

AMA Dockets No. M 2-46
M 2-47
M 2-48
M 2-49
M 2-50
M 2-51
M 2-52
M 2-53
M 2-54

Notice of Assignment of Administrative
Law Judge
Order Consolidating Proceedings
Request for Views of Counsel on
Hearing Date

On May 28, 1974 I was assigned by the Chief Administrative Law Judge to conduct the oral hearings in the above entitled proceedings.

The first matter for consideration is a motion filed by respondent on May 21, 1974 to consolidate the hearings in the nine proceedings. My review of the pleadings indicates, as respondent asserted in its motion, that the petitions involve the same subject matter and the same challenge to the amendment of Order No. 2. Since it appears that such consolidation will expedite the proceedings and there being no objection by petitioners,

the motion to consolidate the hearings is GRANTED.

The next matter to be considered is an appropriate location and time for the hearing. In connection with my present hearing calendar, I have already scheduled six proceedings for hearing outside of Washington, D. C. between June 10 and August 9, 1974. However, during this time period I will be available for hearing in the instant proceedings during the weeks of:

June 17, 1974
July 1, 1974
July 29, 1974
Beginning August 12, 1974

Accordingly counsel for the parties are directed to confer about an appropriate time for the hearing (within the framework of my schedule) and a location for the hearing convenient to all parties (e.g. New York City, Philadelphia, etc.), and advise me of their views on or before June 7, 1974. In addition counsel may wish to consider the feasibility of a formal prehearing conference prior to the hearing.

JOHN A. CAMPBELL

John A. Campbell
Administrative Law Judge

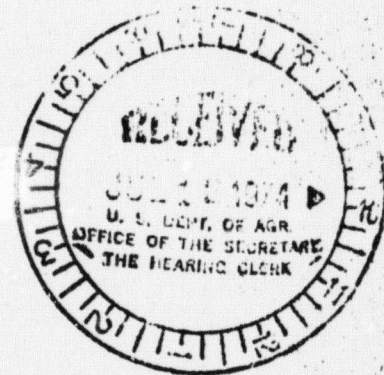
May 30, 1974

UNITED STATES
DEPARTMENT OF AGRICULTURE

DOCKET NO. M2-46

In the Matter of:

CUBA CHEESE, INC., et al



Place: PHILADELPHIA, PENNSYLVANIA

Pages 1-115

Date: JULY 1, 1974

Volume I

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DEPARTMENT OF COMMERCE

In the Matter of:

CUBA CHEESE, U.S., et al.

ANA Patent No. 11-46

National Building
331 Arch Street
Philadelphia, Pennsylvania
Hearby, July 1, 1974

The above-entitled matter came on for hearing be-
fore the Honorable John Campbell, Administrative Law Judge,
pursuant to adjournment, commencing at 2:30 p.m.

Appearances:

Esau, Swig, Reiss & Saul,
by Herman S. Bradley, Esq.,
on behalf of Petitioner Lehigh Valley;

Parro, Harris & Hershman,
by David H. Feeney, Esq. & Roland Harris, Esq.,
on behalf of Petitioner Cuba Cheese, et al.;

Victor Palmer, Esq. and Daniel Pontecelli, Esq.,
on behalf of Respondent Department of Agriculture

Donald W. Dornand, Esq.,
of Cheese and Export,
on behalf of Intervenor Penn Mocha.

Also Present:

H.C. Pedersen, Esq.,
of the District of Columbia Mar.

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THE END.

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